TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 329

UNITED STATES, ETC., ET AL., PETITIONERS.

vs.

OREGON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

PETITION FOR CERTIORARI FILED AUGUST 16, 1960
CERTIORARI GRANTED NOVEMBER 7, 1960

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INDEX

	Original	Print
Record from the Circuit Court of the State of Oregon for the County of Multnomah		
Order appointing administrator	1	1
Final account	3	3
Answer of the State Land Board	10	10
Petition for finding and order of escheat	12	11
Answer to the petition for finding and order of escheat	16	14
Reply to answer of claimant United States of America	20	17
Claim for personal property in estate	22	18
Decision (letter)	24	20
Findings of fact and conclusions of law and order of escheat and decree determining interests in estate	28	22
Exhibit "A"—Table of distribution	32	26
Notice of appeal	35	29
Order as to testimony	45	31
Clerk's certificate (omitted in printing)	47	32

	Original	Print
Proceedings in the Supreme Court of Oregon	51	33
Opinion, Warner, J.	51	33
Judgment	52	50
Clerk's certificate (omitted in printing)	53	50
Order allowing certiorari	54	51
Exhibits:		
No. 1—Excerpt from hospital record	72	52
3—Excerpts from Physical and Neuropsychiatric Examination	76	53
4—Excerpts from Application for Hospital Treatment or Domiciliary Care, dated January 19, 1940	81	55
5—Excerpt from medical certificate	86	58
5(a)—Excerpts from Report of Physical Examination	88	59
6(a)—Excerpts from Medical Certificate, dated Feb. 1, 1943	100	60
6(b)—Letter dated Oct. 8, 1942, from Byron J. Hughes, Superintendent, Winnebago State Hospital, Winnebago, Wisconsin, to Albert R. Freeman, Contact Officer, Veterans Administration, Wood, Wisconsin	101	61
6(c)—Excerpts from Request for Physical Examination, dated October 19, 1942	102	63
6(d)—Excerpts from Report of Neuropsychiatric Examination (First Admission)	103	64
6(f)—Clinical record	115	70
6(g)—Rating Sheet, dated August 25, 1945	116	72
6(h)—Decision of Questions of Fact and Law, submitted September 12, 1945	117	73
7(b)—Award or Disallowance Sheet	127	75
7(c)—Award or Disallowance Sheet	128	76
7(d)—Award or Disallowance Sheet	129	77
7(e)—Award or Disallowance Sheet	130	78
8—Clinical Record	131	79

[fol. 1]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

No. 76207

IN THE MATTER OF THE ESTATE

OF

ADAM B. WARPOUSKE, Deceased.

ORDER APPOINTING ADMINISTRATOR—March 26, 1956

This matter coming on for hearing before the Court, The Honorable William L. Dickson presiding, upon the petition of Portland Trust Bank, a corporation, for an order herein appointing Portland Trust Bank, a corporation, as Administrator of the estate of Adam B. Warpouske, deceased, and the Court, having examined the said Petition, and being now fully advised in the premises, FINDS:

Adam B. Warpouske died intestate in the City of Portland, in Multnomah County, Oregon, on the 19th day of March, 1956. At the time of his death, he was of the age of sixty-eight years.

The said decedent has left no known heirs within the State of Oregon.

At the time of his death, and for more than one year prior thereto, the decedent was a citizen, resident and inhabitant of the City of Portland, Multnomah County, Oregon. He has left estate consisting of personal estate within Multnomah County, Oregon, and within the jurisdiction of this Court.

The Petitioner, Portland Trust Bank, is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business in Portland, in Multnomah County, Oregon. It is authorized to act, and it is engaged, among other things, in the business of acting, as administrator of the estates of persons

deceased. It has on deposit with the Superintendent of Banks of the State of Oregon that deposit required under the provisions of Section 709-030, O.R.S. and it is there-
[fol. 2] fore qualified to act as administrator of the estates of persons deceased without giving special bond upon its appointment in each such instance. The Petitioner, Portland Trust Bank, is a principal creditor of the deceased in that it has been and is now acting as Guardian of the estate of the said deceased, as an incompetent, and that it has unliquidated claims against the estate of the deceased for payment of its fees and expenses in guardianship.

The Petition of Portland Trust Bank for appointment as Administrator, now on file herein, does not specifically designate by name an heir or heirs of the decedent, and for reason of such circumstance the State Land Board of the State of Oregon is an interested party in this proceeding, and the Petition of Portland Trust Bank, now on file herein, discloses, through proof of service annexed thereto, that copy of such Petition has been served upon the State Land Board of the State of Oregon in the manner provided under sub-section (2) of Section 115.310, O.R.S.

The Petitioner, Portland Trust Bank, a corporation, desires appointment as Administrator of the estate of the said Adam B. Warpouske, deceased.

THEREFORE, the facts being as aforesaid, it is at this time

ORDERED that Portland Trust Bank, a corporation, be and it is appointed Administrator of the estate of Adam B. Warpouske, deceased, and that Letters of Administration upon the estate of the decedent issue to the said Portland Trust Bank forthwith.

DATED this 26th day of March, 1956.

/s/ William L. Dickson
Judge

[fol. 3] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH
DEPARTMENT OF PROBATE

(Title Omitted)

FINAL ACCOUNT—Filed Feb. 18, 1957

TO THE HONORABLE, THE JUDGE of the above entitled Court:

Comes now PORTLAND TRUST BANK, Administrator of the Estate of Adam B. Warpouske, deceased, and makes and files this, its Final Account of its proceedings had and done in administration of the above entitled estate and shows to the Court:

Attached hereto as Exhibit "A" is a statement wherein in detail are disclosed all moneys coming to the hands of your Administrator for the account of this estate, with the dates of receipt by your Administrstor, the sources of the several receipts, and the amounts thereof. Such statement further discloses in detail all moneys expended by your Administrator for the account of this estate with a showing in detail of the dates of payment, the identities of the payees, the purposes for which paid, and the amounts, with reference in each instance to the proper voucher supporting the payment, which vouchers are separately filed herewith.

Your Administrator has sold at private sale for cash, conformably to the Order of the Court, entered in the matter of this estate on January 14, 1957, the clothing and personal effects of the decedent and the violin and case of the decedent; and the proceeds are accounted for in the statement, Exhibit "A" hereto. As the result of such sale, all of the assets of this estate are now in money form and the total of such funds of this estate, now in the hands of your Administrator, is the sum of $22,018.77.

Based upon the appraised value of the assets of this estate, disclosed by Inventory and Appraisement herein [fol. 4] to be in the sum of $23,056.02, but actually in the

sum of $22,056.02, due to the fact that an error of $1,000.00 in addition, occurring in tabulation of inventoried and appraised values in said Inventory, incorrectly reaches such figure of $23,056.02, the statutory fees of your Administrator herein are in the sum of $791.68. Your Administrator has employed Messrs. Middleton & Kuykendall, attorneys at law, to represent your Administrator as its counsel in administration of this estate, and a like sum of $791.68 is proper and reasonable to be allowed to your said Administrator for payment to its said counsel as their fees for services rendered in administration.

Prior to the death of the decedent herein, your Administrator, then acting as Guardian of the Estate of Adam B. Warpouske, incompetent, did make and enter into a certain contract with American Archives Association, a corporation organized and existing under the laws of the State of Delaware, whereunder the said American Archives Association agreed to perform certain services and to pay certain costs incident to securing payment to the deceased ward of an estate in inheritance to which American Archives Association had learned the decedent was entitled. Such contract was made and entered into by your Administrator, acting in its then capacity as Guardian of the estate of Adam B. Warpouske, incompetent, under Order of this Court entered on March 14, 1956, in the matter of the guardianship estate of Adam B. Warpouske, incompetent.

Pursuant to the terms of the contract aforesaid, American Archives Association has supplied information and has done and performed work and has paid costs as provided by the terms of such contract, with the result that there has come to the hands of your Administrator, from the estate of Steve J. Warpechowski, deceased, deceased brother of the decedent herein, as administered in the County Court of Calumet County, Wisconsin, the total sum of $21,525.27. Out of the estate of Steve J. Warpechowski, deceased, and before transmittal to the hands of your Administrator of such sum of $21,525.27, there had been paid, as costs chargeable to American Archives Association under the contract aforesaid, a total of $2,205.60, which for purposes of computation of the

fee payable to American Archives Association under the contract aforesaid, should be added to the funds actually [fol. 5] received by your Administrator in the sum of $21,525.27, resulting in a gross of $23,730.87, which sum represented the actual distributable values from the estate of Steve J. Warpechowski, deceased, before there were paid therefrom the sum of $2205.60 chargeable to American Archives Association.

Based upon such total value of $23,730.87 resulting from the estate of Steve J. Warpechowski, deceased, in gross, the said American Archives Association is entitled under its contract aforesaid to payment of the sum of $7,910.29 from which must be deducted the $2205.60 already paid for its account from the Wisconsin administration, leaving $5,704.69 still payable to said American Archives Association under the terms of the contract aforesaid, which amount constitutes a claim against this estate, under the contract aforesaid, by American Archives Association.

American Archives Association has agreed with your Administrator that the computations hereinbefore detailed are correct, and that such sum of $5,704.69 is the amount actually payable from this estate to American Archives Association.

Copy of the Contract with American Archives Association, hereinbefore referred to, and as entered into on March 16, 1956, in the matter of the guardianship estate of Adam B. Warpouske, incompetent, is attached to this accounting as Exhibit "B" and is by reference made a part hereof.

The total of $2205.60 chargeable to American Archives Association in the course of the Wisconsin administration of the estate of Steve J. Warpechowski, deceased, is arrived at as follows:

(a) Administrator's fees in the Wisconsin administration, allowed by the Court were in the total amount of $1,090.12, whereas the normal base fee in Wisconsin was $817.96. The difference, $272.16, represents allowance for unusual services in determination of heirship, properly chargeable to American Archives Association.

(b) Attorney's fees in probate in the Wisconsin administration of the estate of Steve J. Warpechowski, deceased, were allowed by the Court and paid in the sum of [fol. 6] $2,850.00, whereas, under the applicable probate practice in Wisconsin, normal fees for counsel would have been $916.56. The difference, $1,933.44, represented compensation for unusual services performed in securing proof, proving and establishing heirship of the decedent in this estate to the estate of Steve J. Warpechowski, deceased. Such compensation for unusual services is properly chargeable to American Archives Association under its Contract aforesaid.

The total of such two differences, $272.16 and $1,933.44, represents the $2,205.60 with which American Archives Association is charged as above stated.

Claims against this estate and expenses of administration unpaid, remaining to be paid from the present cash balance of this estate, in the sum of $22,018.77, are:

American Archives Association	$5,704.69
Good Samaritan Hospital	198.58
Multnomah County Hospital	796.25
Advance by Middleton & Kuykendall for certified copy of Letters of Administration	.75
Fees in probate of your Administrator	791.68
Fees in probate of Messrs. Middleton & Kuykendall, attorneys for your Administrator	791.68
Cost of Publication of Notice of Hearing upon Final Account	8.00
Total	$8,291.63

After payment of the aforesaid claims and costs of administration, there will remain on hand in the hands of your Administrator, for distribution to those entitled, the sum of $13,727.14.

The decedent, Adam B. Warpouske, lived in a rooming house in the City of Portland, in Multnomah County, Oregon. He was there stricken with a heart seizure and paralytic stroke; and he was taken from his rooming house to Good Samaritan Hospital where he was hospitalized, resulting in the claim of $198.58 above mentioned.

[fol. 7] Because it appeared that he was without funds, or substantially so, he was transferred from Good Samaritan Hospital to the Multnomah County Hospital where he was hospitalized, resulting in the claim of Multnomah County Hospital above mentioned. From the Multnomah County Hospital he was transferred, early in March 1956, to the United States Veterans Hospital in Portland, Oregon, where he died on March 19, 1956. Your Administrator is informed and believes and alleges the fact to be that the decedent Adam B. Warpouske, was unconscious or semi-conscious at the time of his transfer from Multnomah County Hospital to United States Veterans Hospital and that at the time of such transfer he was not, in any sense or in any degree, in possession of his mental faculties.

The decedent, Adam B. Warpouske, has left no known heirs.

There has been filed with your Administrator the claim of H. B. Higley, Administrator of Veterans Affairs, for payment and assignment of the personal property of this estate to the United States of America as trustee for the sole use and benefit of the General Post Fund under the provisions of Section 17, et seq., Title 38, U.S.C.A.

The Federal statutes under which such claim for distribution is made are predicated upon contract as between the United States of America and a decedent veteran who shall die within a United States Veterans Hospital, being a patient therein, it being provided in substance that the contract arises when the veteran shall enter the hospital. Your Administrator points out to the Court that the decedent in this estate was, at the time he entered the United States Veterans Hospital in Portland, Oregon, either unconscious or, at the best, without possession of his mental faculties which circumstance may or may not have effect in law as affording a base for application in effect of the Federal statutes under which the claim for distribution aforesaid is presented. This matter is submitted to the court for determination.

Should it be determined that the United States of America, as trustee for the sole use and benefit of the [fol. 8] General Post Fund, is not entitled to distribu-

tion of the personal estate of the decedent, then under the provisions of Section 111.030, Oregon Revised Statutes, the estate of the decedent available for distribution escheats to the State of Oregon.

All taxes imposed by the Personal Income Tax Act of 1953, as amended, being Sections 316.005 et seq., Oregon Revised Statutes, upon your Administrator, in its capacity as such, which have been payable, have been paid. Certificate of release by the State Tax Commission of the State of Oregon, evidencing such payment, will be filed herein prior to the entry of Order closing this estate.

All taxes due and owing from the decedent and from the Administrator herein or which may be collected from either of them by virtue of the assessment and taxation laws of this State have been paid, excepting that until the Court shall determine the identity of destination of the distributable values of this estate and related inheritance tax obligations, it will not be possible to determine whether or not inheritance tax is payable to the State of Oregon out of this estate and, if so, in what amount.

Administration of this estate is now complete and the same is ready for closing and distribution.

WHEREFORE, your Administrator prays the Order of this Court setting this Final Account for hearing upon a day certain and directing your Administrator to publish notice of the hearing upon and the determination of this Final Account for the time and in the manner provided by law in the Daily Journal of Commerce, which is a newspaper of general circulation, printed and published in Multnomah County, Oregon; and that upon the hearing upon this Final Account, the same be approved as filed and that your Administrator be directed to pay the claims against this estate and the unpaid costs of administration hereinbefore detailed as requiring payment, and that your Administrator be directed to distribute the remainder of the personal property of this estate, being money in the sum of $13,727.14 hereinbefore mentioned, less related inheritance tax, if any be found payable, to the United [fol. 9] States of America as Trustee for the sole use and benefit of the General Post Fund through the hands of a duly qualified officer of the United States Government,

or to the State of Oregon; and further directing that upon the filing of appropriate vouchers disclosing payment of the costs of administration yet to be paid as above detailed and distribution of the remaining personal property assets of this estate in accordance with the terms of the Court's order upon such Final Account in such particular, then that a further and final Order enter herein discharging your Administrator and closing this estate.

PORTLAND TRUST BANK

By /s/ L. B. Hartley
Trust Officer
ADMINISTRATOR

STATE OF OREGON)
County of Multnomah) ss

I, L. B. HARTLEY, being first duly sworn, say that I am Trust Officer of Portland Trust Bank, Administrator of the estate of Adam B. Warpouske, deceased; I have examined the foregoing FINAL ACCOUNT in the matter of said estate and I know the contents thereof, and the same is true.

/s/ L. B. Hartley

Subscribed and sworn to before me on this 15 day of February, 1957.

/s/ J. S. Middleton
Notary Public for Oregon
[SEAL] My Commission expires: May 1, 1960

[fol. 10] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH IN PROBATE

(Title Omitted)

ANSWER OF THE STATE LAND BOARD—Filed March 20, 1957

Comes now the State of Oregon, acting by and through the State Land Board, and admits, denies and alleges as follows:

I

Admits the allegations of paragraphs I, II, III, IV and V of the Claim for Personal Property in Estate herein filed by the Administrator of Veterans' Affairs.

II

Denies the allegations contained in paragraph VI.

WHEREFORE, the State of Oregon, acting by and through the State Land Board, having fully answered the Claim of the Administrator of Veterans' Affairs prays that said claim be denied.

ROBERT Y. THORNTON
Attorney General of Oregon

/s/ Catherine Zorn
Assistant Attorney General
Attorneys for the State
Land Board

[fol. 11] Duly Sworn to by E. T. Pierce
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 12] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH IN PROBATE

(Title Omitted)

PETITION FOR FINDING AND ORDER OF ESCHEAT—Filed March 20, 1957

Comes now the State of Oregon, acting by and through the State Land Board, and alleges as follows:

I

That Adam B. Warpouske died intestate without known heirs on March 19, 1956, leaving an estate consisting of personal property.

II

That at the time of his death the decedent was a resident of Multnomah County, Oregon.

III

That petitioner is informed and believes and therefore alleges that prior to his death the decedent was stricken with a heart seizure and paralytic stroke and was taken to Good Samaritan Hospital where he was hospitalized; that he was transferred from Good Samaritan Hospital to the Multnomah County Hospital, and that from the Multnomah County Hospital he was transferred early in March 1956 to the United States Veterans Hospital in Portland, Oregon, where he died on March 19, 1956.

IV

That your petitioner is informed and believes and therefore alleges that at the time of his transfer from Multnomah County Hospital to the Veterans Hospital he was unconscious or semi-conscious, and was not in any sense

[fol. 13] or degree possessed of his mental faculties or of mental capacity enabling him to contract.

V

That on the 9th day of March, 1956, the Portland Trust Bank, an Oregon corporation, was appointed guardian of the estate of Adam B. Warpouske, and that said decedent remained under guardianship until his death.

VI

That petitioner is informed and believes and therefore alleges that said decedent was transferred from Multnomah County Hospital to the Veterans Hospital without the knowledge, consent or authority of the guardian and without any order of the court authorizing his transfer or admission to the Veterans Hospital, or his treatment therein.

VII

That no contract arose or was created under the provisions of or by virtue of § 17 et seq., Title 38, U.S.C.A., by reason of decedent's transfer to the United States Veterans Hospital or his treatment therein at the time of his death.

VIII

That said decedent's estate has escheated to the State of Oregon for the benefit of the Common School Fund subject to the rights, if any, of the State of Wisconsin in and to said estate.

WHEREFORE, your petitioner prays for an order as follows:

1. That Adam B. Warpouske died on March 19, 1956, in Multnomah County, Oregon, intestate without known heirs;

2. That the clear proceeds derived from said estate escheated to and became the property of the State of Oregon on the date of the death of said decedent subject [fol. 14] to the rights, if any, of the State of Wisconsin, in and to said estate.

ROBERT Y. THORNTON
Attorney General of Oregon

/s/ Catherine Zorn
Assistant Attorney General
Attorneys for Petitioner
State of Oregon, acting by and through the State Land Board

Duly Sworn to by E. T. Pierce
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 15] • • •

[fol. 16] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

(Title Omitted)

ANSWER TO THE PETITION FOR FINDING AND ORDER OF ESCHEAT—Filed May 1, 1957

Comes now the United States of America, by C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and for answer to the petition for finding and order of escheat of the State of Oregon, acting by and through the State Land Board, admits, denies and alleges as follows:

I

Admits the allegations of Paragraphs I and II of said petition.

II

For answer to Paragraph III of said petition, claimant United States of America admits that decedent, Adam B. Warpouske, was transferred to the United States Veterans Hospital in Portland, Oregon on March 1, 1956 from the Multnomah County Hospital; that he died in the Veterans Hospital on March 19, 1956; admits that said decedent had had a paralytic stroke prior to his admission into the Veterans Hospital, but lacks information as to the remaining allegations in said paragraph and therefore denies the same and the whole thereof.

III

Admits the allegations of Paragraphs IV and V of the petition.

IV

Answering Paragraph VI of said petition, claimant admits the allegations therein contained, except that claimant denies that the guardian did not approve or acquiesce in the treatment afforded decedent at the Veterans Hospital of the United States of America.

V

Denies the allegations contained in Paragraphs VII and VIII of said petition.

[fol. 17] For a first, further and affirmative defense to the petition herein, and by way of presenting its claim herein, the United States of America alleges as follows:

I

That Adam B. Warpouske, a veteran of the armed forces of the United States, died intestate while a patient in the Veterans Administration Hospital in Portland, Oregon, on the 19th day of March 1956, and while being furnished care and treatment therein by the Veterans Administration, leaving no spouse, next-of-kin or heirs entitled to his personal property under the laws of the State of Oregon, where he was domiciled.

II

That the Portland Trust Bank is the duly appointed, qualified and acting Administrator of the Estate of the decedent, Adam B. Warpouske, having been appointed Administrator of said Estate by Order of the above-entitled Court on the 26th day of March 1956.

III

That the remaining personal property of the decedent herein, after payment of just claims and costs of administration, consisting of cash of the approximate amount of $13,720.14, is now in the possession of the Portland Trust Bank in its capacity as Administrator of the Estate of said decedent.

IV

That by the terms of the Act of Congress of June 25, 1910 (36 Stat. 736), 24 USC 136, as amended by the Act of December 26, 1941 (55 Stat. 868), 38 USC 17-17j, the personal property as to which said decedent died intestate, including all money and choses in action owned by said decedent at the time of his death and not disposed of by will or otherwise, immediately vested in and became the property of the United States, as Trustee, for the sole use and benefit of the General Post Fund.

V

That under the facts herein set forth and the applicable law, including Article VI, Clause 2, of the Constitution of [fol. 18] the United States of America, the United States is entitled to the personal property of decedent, including all monies and choses in action, for the trust purpose described in the said General Post Fund Statute, its rights being superior to any that may be asserted by the State of Oregon under its laws relating to the escheat of decedents' estates.

WHEREFORE, claimant United States of America prays that the petition for finding and order of escheat of the State of Oregon, acting by and through the State Land Board, be dismissed and held for nought and that a decree enter herein authorizing and directing the Portland Trust Bank, decedent's administrator herein, to pay and deliver over to the United States of America, the balance of the personal estate of the said Adam B. Warpouske remaining in the Administrator's possession after payment of all valid claims of creditors and deduction of the reasonable and proper costs of expenses of the administration, but without deduction on account of any inheritance or other taxes which may be claimed by the State of Oregon.

C. E. LUCKEY
United States Attorney
District of Oregon

/s/ Victor E. Harr
VICTOR E. HARR
Assistant United States Attorney
Of Attorneys for Claimant
United States of America

Duly Sworn to by Victor E. Harr
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 19] • • •

[fol. 20] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH
DEPARTMENT OF PROBATE

(Title Omitted)

REPLY TO ANSWER OF CLAIMANT UNITED STATES OF AMERICA—Filed May 10, 1957

Comes the State of Oregon, acting by and through the State Land Board, and for reply to the answer of claimant United States of America admits, denies and alleges as follows:

I

Admits the allegations of paragraphs I, II and III of the first, further and affirmative defense of claimant United States of America.

II

Denies the allegations contained in paragraphs IV and V of said claimant's first, further and affirmative defense.

WHEREFORE the State of Oregon, acting by and through the State Land Board, prays that a decree be entered as prayed for in the petition of escheat of said State Land Board on file herein.

ROBERT Y. THORNTON
Attorney General

/s/ Catherine Zorn
Assistant Attorney General

Of Attorneys for Petitioner, State of Oregon, acting by and for the State Land Board

Duly Sworn to by E. T. Pierce
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 21] * * *

[fol. 22] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH IN PROBATE

(Title Omitted)

CLAIM FOR PERSONAL PROPERTY IN ESTATE—
Filed Aug. 13, 1957

To the Portland Trust Bank as Administrator of the Estate of Adam B. Warpouske, Deceased:

COMES Now H. V. Higley, Administrator of Veterans Affairs, by his duly appointed attorney, Albert T. Elott, Chief Attorney, Veterans Administration Regional Office, Lincoln Building, Portland, Oregon, and demands the personal property in the estate of the above named deceased person upon the grounds and for the reasons as follows:

I.

That the said Adam B. Warpouske was a veteran of the United States armed forces.

II.

That said Adam B. Warpouske died intestate on March 19, 1956, at the Veterans Administration Hospital, Portland, Oregon, where he had been admitted as a veteran and where he was being furnished care and treatment therein by the Veterans Administration at the time of his death.

III.

That the said decedent left an estate consisting of personal property.

IV.

That at the time of his death, the said Adam B. Warpouske was a resident and inhabitant of Multnomah County, State of Oregon.

V.

That said Adam B. Warpouske did not leave surviving him any spouse, next of kin or heirs at law capable of inheriting under the laws of his domicile.

[fol. 23]

VI.

That the personal property which Adam B. Warpouske owned, or owned an interest in, and to which he died intestate, vested in & or escheated to the United States at the time of his death by virtue of Section 17 et seq., & 450 Title 38, U.S.C.A., and is the property of the United States as trustee for the sole use and benefit of the General Post Fund, and demand is hereby made by the United States therefor.

H. V. Higley,
Administrator of Veterans Affairs,

By /s/ Albert T. Elott
Albert T. Elott, Chief Attorney
Veterans Administration Regional Office
208 S. W. Fifth Avenue
Portland 4, Oregon

Duly Sworn to by Albert T. Elott
Jurat Omitted in Printing

[fol. 24] CIRCUIT COURT OF OREGON
FOURTH JUDICIAL CIRCUIT

Department Number Seven
PORTLAND

William L. Dickson
Judge

March 28, 1958

(Title Omitted)

DECISION—March 28, 1958

Mr. Victor Harr
Assistant District Attorney
United States Court House
Portland 4, Oregon

Re: Estate of ADAM B. WARPOUSKE, Deceased
Multnomah County Probate No. 76-207

Dear Mr. Harr:

After carefully considering the evidence before the Court and the Briefs of counsel, this Court has concluded and finds:

That the deceased Adam B. Warpouske was mentally ill for many years prior to December 26, 1941, and continued to be mentally ill from said date until his death; That he was not mentally competent to understand the consequences of his acceptance of hospitalization in the Veterans Administration Facilities or to enter into any contract respecting such hospitalization or the consequences thereof, and in particular he was not mentally competent to enter into any agreement, either by word or deed, whereby his undisposed personalty would vest in the United States as Trustee for the General Post Fund;

That unless the deceased, either by word or deed, entered into a valid contract, the provisions of Section 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death;

That the administrative expenses in the Guardianship Estate of Adam B. Warpouske (Multnomah County [fol. 25] Clerk's No. 76000) should be borne proportionately by the assets derived from United States Government pension funds and the assets derived from the decedent's brother in Wisconsin;

And that that part of the decedent's estate which represents the balance of funds derived from Veterans Compensation escheats to the Federal Government by virtue of Section 450 of Title 38, U.S.C., and that the remainder of the estate escheats to the State of Oregon for the benefit of the Common School Fund.

Counsel for the respective parties are respectfully requested to collaborate in making the necessary computations concerning the sharing of the guardianship estate expenses as hereinabove indicated, and in preparing and presenting the appropriate decree consonant with this opinion.

Respectfully yours,

/s/ William L. Dickson
WILLIAM L. DICKSON
Circuit Judge
Department of Probate

Duplicate Originals to:

Miss Catherine Zorn
Assistant Attorney General
Salem, Oregon

Middleton & Kuykendall
Attorneys at Law
Pacific Building
Portland 4, Oregon

[fols. 26-27] • • •

[fol. 28] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

(Title Omitted)

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER OF ESCHEAT AND DECREE DETERMINING INTERESTS IN ESTATE—May 6, 1958

This matter came on for hearing before this court on August 12, 1957, upon the claim of the United States Veterans' Administrator for the personal property in this estate and the petition of the State of Oregon, acting by and through the State Land Board, for the escheat of this decedent's estate. The Portland Trust Bank, administrator of the estate, appeared by its attorney, J. S. Middleton; the United States Veterans' Administrator appeared by its attorney, Victor E. Harr, Assistant United States District Attorney; and the State of Oregon appeared by its attorney, Catherine Zorn, Assistant Attorney General of Oregon.

The United States of America, through the Veterans' Administrator, and the State of Oregon, acting by and through the State Land Board, having asserted their respective claims, and evidence, arguments of counsel and briefs having been submitted by the respective parties, the court finds and concludes as follows:

FINDINGS

1. The decedent, Adam B. Warpouske, was mentally ill for many years prior to December 26, 1941, and continued to be mentally ill from said date until his death.

2. On a number of occasions prior to March 1, 1956, the decedent, Adam B. Warpouske, was hospitalized in various hospitals operated in various places in the United [fol. 29] States of America by the United States Veterans' Administration.

3. The said Adam B. Warpouske was not mentally competent to understand the consequences of his acceptance of hospitalization in hospitals operated and conducted by the United States Veterans' Administration, nor was he competent to enter into any contract respecting any such hospitalization; and in particular, he was not mentally competent to enter into any agreement, either by word or deed, whereby his undisposed personalty would vest in the United States of America as trustee for the General Post Fund.

Conclusions

1. Unless the deceased, either by word or by deed, entered into a valid contract upon entry into a hospital conducted by the United States Veterans' Administration, the provisions of § 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death.

2. That part of the decedent's estate which represents the balance of funds derived from United States Veterans' compensation should be charged with its proportionate share of the administration expenses in the guardianship estate of Adam B. Warpouske, incompetent, Multnomah County Clerk's Filing No. 76000; and after such charge of proportionate expenses, the remainder of that part of the decedent's estate, which represents the balance of funds derived from compensation paid by the United States Veterans' Administration, shall be distributed to the United States of America under the provisions of § 450, Title 38, United States Code.

3. The remainder of the estate of the decedent escheats to the State of Oregon for the benefit of the Common School Fund and so is distributable to the State Land Board of the State of Oregon.

[fol. 30] 4. A table delineating the amounts in dollars to be distributed to the United States of America and to the State Land Board of the State of Oregon, under the foregoing conclusions of law, is annexed hereto as Exhibit "A" and is by reference made a part hereof; and the result of such table is that out of the sum of $13,727.14, now on hand as the assets of this estate, the sum

of $971.47 shall be distributed to the United States of America, with the remaining sum of $12,755.67, distributable to the State Land Board of the State of Oregon.

ORDER OF ESCHEAT AND DECREE DETERMINING INTERESTS IN ESTATE

Based upon the foregoing findings and conclusions, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the claim of the United States Veterans' Administrator for the personal property in this estate be denied, except as to so much of the clear proceeds thereof as was derived from unused federal veterans' pension funds paid to the decedent Adam B. Warpouske;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the petition of the State of Oregon for order and finding of escheat be hereby granted, except as to so much of the estate of the deceased as was derived from unused federal veterans' pension funds;

IT IS ORDERED, ADJUDGED AND DECREED that the expenses of administration of the guardianship estate of Adam B. Warpouske (Multnomah County Clerk's Filing No. 76000) be borne proportionately by the assets derived from the decedent's unused federal veterans' pension funds and the assets derived from the estate of the decedent's deceased brother in Wisconsin;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

1. That Adam B. Warpouske died on March 19, 1956. in Multnomah County, Oregon, intestate without heirs;

2. That the clear proceeds derived from his estate, [fol. 31] except as to such portion thereof comprising unused federal veterans' pension funds, have escheated to and become the property of the State of Oregon;

3. That such portion of the decedent's estate as was derived from unused federal veterans' pension funds, less the prorated cost of guardianship and decedent's estate administration expenses, have inured to the United States of America by virtue of § 450, Title 38, United States Code;

4. That the administrator of the estate herein deliver the clear proceeds of the said respective portions of the decedent's estate to the State Land Board of the State of Oregon for the benefit of the Common School Fund and to the Veterans' Administration of the United States of America to be credited as provided by law.

Let this Order be entered Nunc Pro Tunc as of May 6, 1958.

Dated this 6 day of May, 1958.

/s/ William L. Dickson
Judge

[fol. 32] EXHIBIT "A" TO FINDINGS, ETC.

Decedent's Total Assets		
Assets derived from decedent's deceased brother's estate in Wisconsin	$21,525.27	
Clothing	3.00	
Violin	25.00	
		$21,553.27
Assets in guardianship estate derived from unused federal veterans' pension funds		
Bonds	1,000.00	
Interest	134.25	
		1,134.25
Total assets of guardianship and decedent's estates		$22,687.52
State's proportionate share of assets		
$22,687.52 : $21,553.27 = 95%		
United States' proportionate share of assets		
$22,687.52 : $ 1,134.25 = 5%		
Expenses of Guardianship		
Attorney's fee	500.00	
Guardian's fee	125.00	
Clerk's fee	1.50	
		626.50
State's proportionate share of expenses 95% of $626.50	595.18	
United States' proportionate share of expenses 5% of $626.50	31.32	
		626.50

[fol. 33]

Expenses of Decedent's Estate	$ 8,333.88	
Less fees of American Archives Association chargeable against collection of assets from deceased brother's estate	5,704.69	
Actual expenses of administration of decedent's estate		$ 2,629.19
State's proportionate share of decedent's estate administration		
95% of $2,629.19	2,497.73	
United States' proportionate share of decedent's estate administration		
5% of $2,629.19	131.46	
Total		2,629.19
State's proportionate share of administration of decedent's estate	2,497.73	
State's proportionate share of administration of guardian's estate	595.18	
State's proportionate share of expenses		3,092.91
United States' proportionate share of administration of decedent's estate	131.46	
United States' proportionate share of administration of guardianship estate	31.32	
United States' proportionate share of expenses		162.78

[fol. 34]

State's portion of assets of decedent's estate		$21,553.27
Less:		
State's proportionate share of expenses, and American Archives Association fee	$ 3,092.91 5,704.69	
Total deductible		8,797.60
STATE'S SHARE OF CLEAR PROCEEDS OF DECEDENT'S ASSETS		12,755.67
United States' share of decedent's assets derived from unused pension funds	1,134.25	
Less United States' proportionate share of guardianship and estate administration expenses	162.78	
UNITED STATES' SHARE OF CLEAR PROCEEDS OF DECEDENT'S ASSETS DERIVED FROM PENSION FUNDS		971.47
TOTAL ASSETS ON HAND FOR DISTRIBUTION		$13,727.14

[fol. 35] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

No. 76-207

In the Matter of the Estate of
ADAM B. WARPOUSKE, Deceased.

PORTLAND TRUST BANK, Administrator of the Estate of Adam B. Warpouske, Deceased,
RESPONDENT,

STATE OF OREGON, Acting by and through the State Land Board,
PETITIONER-RESPONDENT,

VS.

UNITED STATES, as Trustee for the sole use and benefit of the General Post Fund,
PETITIONER-APPELLANT.

NOTICE OF APPEAL—Filed July 2, 1958

To: STATE OF OREGON, Acting by and through the State Land Board, and to Honorable Y. Thornton, Attorney General for the State of Oregon, and Catherine Zorn, Assistant Attorney General, of their attorneys; and to PORTLAND TRUST BANK, Administrator of the Estate of Adam B. Warpouske, Deceased, and to J. S. Middleton, of its attorneys:

YOU AND EACH OF YOU are hereby given notice that the UNITED STATES, as Trustee for the sole use and benefit of the General Post Fund, does hereby appeal from that portion of that certain Order of Escheat and Decree Determining Interests in Estate determining that the clear proceeds derived from decedent's estate, except as to such portion thereof comprising unused Federal Veteran's pension funds, escheated to and became the property of the

State of Oregon, and that portion directing the administrator of the estate to deliver the aforesaid proceeds to the State Land Board of the State of Oregon for the benefit of the Common School Fund, which said Order and Decree was made, given and entered of record on the 6th day of May, 1958, by the Honorable William L. Dickson, Judge of the Circuit Court of the State of Oregon, for the County of Multnomah, in the above entitled matter entitled "In the Matter of the Estate of Adam B. Warpouske, Deceased."

C. E. LUCKEY,
United States Attorney
For the District of Oregon

/s/ Victor E. Harr
VICTOR E. HARR,
Assistant U. S. Attorney
Of Attorneys for
Petitioner-Appellant

[fol. 36] MAILING CERTIFICATE
(Omitted in Printing)

[fols. 37-44] • • •

[fol. 45] IN THE
CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
PROBATE DEPARTMENT

(Title Omitted)

ORDER AS TO TESTIMONY—Sept. 10, 1958

This matter coming on ex parte for an order approving a report of the testimony adduced at the trial of the above-entitled cause; and the Court having considered the Stipulation of the parties herein and being fully advised as to the futility of further efforts to obtain a full, true and correct transcript of the testimony so adduced before me at said trial, does hereby approve and adopt as true, correct and authentic a substantial summary of testimony of Dr. Robert Michel, the only witness whose testimony was material to the issues herein involved, as follows:

"Adam B. Warpouske, decedent herein, on December 31, 1955, was admitted to the Good Samaritan Hospital, Multnomah County, Oregon, for treatment of a hip fracture and a cerebral hemorrhage. On January 5, 1956, he was moved to the Multnomah County Hospital for treatment at the expense of the County of Multnomah, State of Oregon. Decedent Adam B. Warpouske remained in the Multnomah County Hospital until March 1, 1956, when he was transferred to the Veterans Hospital, Marquam Hill, Portland, Oregon, for further treatment and hospitalization. During his period of hospitalization in the Multnomah County Hospital his mental condition varied from comatose to semicomatose and he was, for the most part, irrational. At times he appeared to indicate a 'Yes' or 'No' response to simple questions. He was at all times lethargic and mentally confused. The only material testimony given at the trial was that of Dr. Robert Michel of the Multnomah County Hospital, who was of the opinion that

[fol. 46] decedent probably did not know where he was and in all probability did not know that he was being transferred to the Veterans Hospital; that he did not know whether or not anyone had told the decedent that he was being so transferred and hence could not testify whether or not the decedent was aware of the transfer."

WITNESS my hand as Circuit Judge of the County of Multnomah, State of Oregon, this 10 day of Sept. 1958, at Portland, Oregon.

/s/ William L. Dickson
Circuit Judge

[fols. 47-48] Clerk's Certificate to foregoing Transcript (Omitted in Printing)

[fols. 49-50] • • •

[fol. 51] IN THE
SUPREME COURT OF THE STATE OF OREGON

Department 2.

IN THE MATTER OF THE ESTATE OF ADAM B. WARPOUSKE, DECEASED.

STATE LAND BOARD, RESPONDENT,

v.

UNITED STATES, APPELLANT.

Appeal from Circuit Court, Multnomah County.

WILLIAM L. DICKSON, Judge.

Argued and submitted April 13, 1960.

Alan S. Rosenthal, Washington, D. C., argued the cause for appellant. With him on the brief were George Cochran Doub, Assistant Attorney General, Washington, D. C., C. E. Luckey, United States Attorney, Portland, and Robert Wang, Washington, D. C.

Catherine Zorn, Assistant Attorney General, Salem, argued the cause for respondent. With her on the brief was Robert Y. Thornton, Attorney General, Salem.

Before MCALLISTER, Chief Justice and WARNER, O'CONNELL and DUNCAN, Justices.

OPINION—May 18, 1960

AFFIRMED.

WARNER, J.

This is an appeal by the United States from a decree of the circuit court for Multnomah county, department of probate, escheating to the state of Oregon for the benefit of the common school fund that portion of the estate of [fol. 51-B] Adam B. Warpouske received by him from the estate of his deceased brother. The United States claims said fund pursuant to a federal act hereinafter referred to, in its capacity as trustee, for the sole use

and benefit of the General Post Fund, a trust created by that act.

The federal government's position here is predicated solely upon the provisions of 38 USCA §§ 17-17j, hereinafter referred to as the "Act of 1941." The pertinent sections read:

> "§ 17. Vesting of undisposed personalty in United States as trustee for General Post Fund
>
> "Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b) (45) of Title 31.
>
> "The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall con-
> [fol. 51-C] stitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto. • • •

"§ 17a Presumption from death in facility of contract for disposition of property

"The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter, but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate. • • •

• • • •

"§ 17g. Notice to veterans of law

"The Administrator of Veterans' Affairs shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however,* That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed. • • •"

The foregoing act was preceded by the Act of June 25, 1910, c 384, which was amended by Act of December 26, 1941, c 634, thus giving it its present form. In discussing certain decisions which follow, we will refer to the earlier version as the Act of 1910.

[fol. 51-D] The facts are not in dispute. On December 31, 1955, Warpouske, a veteran of World War I, was admitted to Good Samaritan Hospital, in Portland, Oregon, for treatment of a hip fracture and cerebral hemorrhage. Five days later, he was moved to the Multnomah County Hospital for treatment at the expense of the county. There he remained until March 1, 1956, when he was transferred to the U. S. Veterans Hospital, Marquam Hill, Portland, Oregon.

While in the county hospital, his mental condition varied from comatose to semi-comatose and he was at all times lethargic and mentally confused. The testimony of one of the doctors of the county hospital was to the effect that Warpouske probably did not know where he was and in all probability did not even know he had been transferred. Indeed, the United States concedes that on March 1, 1956, by reason of his serious mental condition, he could not handle his own affairs. It also produced records of the Veterans Administration showing, as early as 1924, a long history of mental deficiency predating his last illness beginning in December, 1955. A diagnosis made by that facility in 1933 revealed a condition of dementia praecox as early as 1924, and concluded he was insane as of that date and probably before.

His treatment at the Veterans Hospital from the date of his entry, March 1, 1956, to the date of his death, March 19, 1956, reflects no change in his physical or mental condition. There is no evidence of or suggestion by the United States that the decedent during that period was even momentarily mentally competent to negotiate a contract or make a testamentary disposition of his property.

Dying as he did intestate and without known heirs, [fol. 51-E] his estate will escheat to the state of Oregon unless it appears that the federal government has a superior right thereto under the sections of the Congressional Act of 1941, supra.

There is no record indicating who made the decision for the transfer. Certainly, the veteran had no capacity to do so nor did he then have a guardian or relatives to act in his behalf. His presence in the Veterans Hospital can only be said to have been an involuntary admission, even though there was no question as to his right to be there by reason of his disabilities and war service status.

On March 9, 1956, the Portland Trust Bank was appointed guardian of Warpouske's estate for the purpose of receiving an inheritance from the estate of a brother who predeceased him in Wisconsin. This was in the net amount of $12,727.67. In addition thereto, he had when he died an item of personal property of the value of $28 and unexpended veterans pension benefits in the amount

of $1,134.25. No contest exists between the parties as to the government's right to receive the last amount as rightly accruing to it under 38 USCA § 450(3) of the Act of 1930.

Out of the foregoing statement we cull these significant admitted facts which bear heavily in the formulation of our final judgment: Warpouske, long before determined insane, was totally mentally incompetent when he was involuntarily delivered to the Veterans Hospital on March 1, 1956; and that then and thereafter until the date of his death he was incompetent to contract or to make a will, and neither knew where he was or that he had been the recipient of a substantial inheritance.

Contrary to the argument advanced by the govern-
[fol. 51-F] ment, we are of the opinion that when we take the Act of 1941 by its four corners it sounds in contract. It is designed to effect a contractual relationship between the veteran patient and the United States. This is emphasized by words and phrases appearing in its several sections. Thus, we find "The *acceptance* of care or treatment * * * shall constitute an *acceptance* of the provisions and conditions of this subchapter and have the effect of an *assignment*" (Sec 17 of Act); "The fact of death * * * shall give rise to a conclusive presumption of a valid *contract*." (Sec 17a of Act) We note, too, that Sec 17g directs "a form of application for hospital treatment and domiciliary care which shall include a *notice* of the provisions of this subchapter." (Emphasis supplied.)

Appellant's principal assertion of error is: that the court erred "because [it held that] he [the decedent] had not entered into *a valid contract* with the United States providing for such disposition [of his estate] upon his death." (Emphasis supplied.)

The contractual character of the Act of 1941 has been consistently recognized and applied by the federal courts, as demonstrated by the following cases: *U. S.* v. *Gallagher*, 97 F Sup 1014, 1015 (SD Cal 1951); *U. S.* v. *Brown*, 110 F Sup 370, 372 (SD Cal 1952); *U. S.* v. *Peoples Nat. Bank of Chicago*, 121 F Sup 331, 332 (ND Ill 1953); *U. S.* v. *The Mid City Nat. Bank of Chicago*, 121 F Sup 402, 403 (ND Ill 1953); *U. S.* v. *Security-First Nat. Bank*

of Los Angeles, 130 F Sup 521, 522 (SD Cal 1955); *U. S.* v. *Stevens,* 302 US 623, 82 L ed 484, 58 S Ct 388 (1938). It was also so construed in the following state cases: *In re Witte's Estate,* 174 Kan 360, 255 P2d 1039, 1042 [fol. 51-G] (1953); *In re Turner's Estate,* 171 Cal Ap2d 682, 341 P2d 376, 379 (1959). All of the cases cited in this paragraph, except *U. S.* v. *Stevens,* construed the Act of 1941 as it is presently relied upon by the government.

It would appear from the Act of 1941, as well as by judicial declarations made in construing it, that the Congress acted with its usual respect for the Constitution and deliberately adopted the contractual concept in order to avoid trespassing upon an area reserved to the states by the Tenth Amendment; that is, the right to legislate concerning the devolution of property of intestates, including the right to declare escheats.

This conclusion is given recognition in *U. S.* v. *Stevens,* supra (82 L ed at 488), and in *U. S.* v. *Security-First Nat. Bank of Los Angeles,* supra (130 F Sup at 523).

The Act of 1941, being, as it is, a species of statutory contract, is governed by the ordinary rules relating to actions on contract. *Foley* v. *Leisy Brewing Co.,* 116 Iowa 176, 89 NW 230, 231.

It is a principle universally recognized that only the mentally competent can enter into a binding contractual engagement and so, too, the further rule that silence and inaction do not amount to an acceptance of an offer. *Dexter* v. *Hall,* 82 US 20, 21 L ed 73, 77; *Beach* v. *U. S.,* 226 US 243, 57 L ed 205, 33 S Ct 20. These declarations of the law form a part of our own jurisprudence. See *Farley* v. *Parker* (1876), 6 Or 105, 111; *Bowman* v. *Wade* (1909), 54 Or 347, 357, 103 P 72; and *Graham* v. *Allen* (1925), 116 Or 501, 505, 241 P 1007, wherein it was held that an instrument signed by one non compos mentis at the time of its execution is *void.* See, also, *German Savings & Loan Soc.* v. *DeLashmutt,* 67 F 399 (CC D Or [fol. 51-H] 1895), following *Dexter* v. *Hall,* supra; *Edwards* v. *Davenport,* 20 F 756 (CC SD Iowa 1883), and *Farley* v. *Parker,* supra. Infants and the mentally incompetent both command the protection of courts of law, as well as courts of equity. *Dexter* v. *Hall,* supra (21 L ed at 77).

In coming to his conclusion in *U. S.* v. *Stevens,* supra, that a valid contractual relationship subsisted between the veteran and the government, we find what we deem a significant statement in the light of the facts prevailing in this matter. There, Mr. Jusice Black observed: "Nothing in the record indicates that the agreement was not fairly and voluntarily entered into between the parties, or that it was inequitable, unjust or not upon valuable consideration. *Both parties were competent to make the contract.*" (302 US at 628; 82 L ed at 488) (Emphasis supplied.)

Crowded to avoid the law's solicitude for the incompetent in the area of contract, appellant attempts to sidestep it by recourse to that part of Sec 17a of the Act of 1941, reading: "The fact of death of the veteran (admitted as such) in a facility or hospital, • • • leaving no spouse, next of kin, or heirs, shall give rise to *a conclusive presumption of a valid contract.*" (Emphasis supplied.) In support of this position, appellant advances the argument: "This provision is wholly inconsistent with the view of the court below that Congress intended to require an actual contract between the veteran and the federal government." If by "actual" appellant means only express contracts and not contracts so forcibly implied by the statutory conclusion, then it flies in the face of the consistent line of federal holdings, as pointed out above, that both the Act of 1910 and its successor, the Act of [fol. 51-I] 1941, are premised upon a theory of contractual relationship.

Assuming without deciding that between the government and veterans who are sui juris the Congress can create a valid contractual relationship by the employment of the conclusive presumption, we are still confronted with the question as to whether such a presumption can be effectively and constitutionally applied against a concededly incompetent veteran. In short, can a legislative body defy common experience and by resort to fiat convert the irrational into the rational, transform the unnatural into the natural? Has Congress the power by the adoption of the device of an absolute presumption to create a "valid" engagement out of one made by an incompetent

person, which without doubt would otherwise be declared to be a nullity by the courts?

Presumptions, whether conclusive or disputable, are generally defined as inferences *required* by a rule of law to be drawn as to the existence of one fact from the existence of some other established basic fact. They may be created by statute if there is some justification of public policy, or a rational connection between the fact proved and the fact presumed. But statutes declaring certain facts to be even prima facie or rebuttable evidence of other facts can violate constitutional guaranties of due process where there is no rational connection between the facts proved and the ultimate fact presumed. *Tot* v. *U. S.*, 319 US 463, 87 L ed 1519, 63 S Ct 1241 (1943); *McFarland* v. *American Sugar Ref. Co.*, 241 US 79, 60 L ed 899, 36 S Ct 498; *Manley* v. *Georgia*, 279 US 1, 6, 73 L ed 575, 578, 49 S Ct 215; *Morrison* v. *California*, 291 US 82, 91, 78 L ed 64, 54 S Ct 281; *Great Atlantic &* [fol. 51-J] *Pacific Tea Co.* v. *Ervin*, 23 F Sup 70, 80 (DC Minn 1938); *U. S.* v. *Jones*, 176 F2d 278 (9th Cir 1949); 1 Jones, Evidence (5th ed), 23-24, § 12; IV Wigmore, Evidence, 715, § 1353; Anno 162 ALR 495; 16A CJS 817, Constitutional Law § 621, n 74; 20 Am Jur 39-41, Evidence §§ 9, 10; 10 Tex Law Rev 34 (1931-32); *City of Seattle* v. *Ross*, — Wash —, 344 P2d 216, 219 (1959).

Mr. Justice Holmes in *McFarland* v. *American Sugar Ref. Co.*, supra, observes:

> "As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is 'essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.' * * *." (241 US at 86)

Perhaps the clearest and best enunciated statement of the test of national connection is found in that made by Mr. Justice Roberts in *Tot* v. *U. S.*, supra (87 L ed at 1524):

"• • • Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts."

[fol. 51-K] Although this court has never been faced with a problem of the character now presented, our adherence to these principles has implicit support, as reflected by *Wyckoff* v. *Mutual Life Ins. Co.*, 173 Or 592, 608, 147 P2d 227, where we cited with approval and with the emphasis there indicated the following statement from 20 Am Jur 40, Evidence § 9:

"• • • Statutes declaring certain facts to be prima facie or presumptive evidence of other facts do not, *where there is some rational connection between the facts proved and the ultimate facts presumed,* deny equal protection of the laws or violate constitutional guaranties of due process of law. • • •"

See, also, our holding in *Burke* v. *Burke*, 216 Or 691, 697, 340 P2d 948, where Mr. Justice MILLARD, in discussing the presumption of a child's legitimacy by reason of being born in wedlock (ORS 41.360(3) and 109.070), observes: "• • • the modern trend is away from the rule of conclusiveness. 57 ALR2d 759," and cites with approval the following statement from *Anderson* v. *Anderson*, 214 Cal 414, 5 P2d 881, 882: "It [a presumption] cannot prevail as against undisputed facts to the contrary and at variance with the laws of nature." Although discussing the Burke case presumption of legitimacy, we are of the opinion that the statements quoted are equally forceful when the making of "valid contract" is conclusively presumed to have been accomplished by one non compos mentis while a thrall to his mental disability.

What is true of rebuttable presumptions has even more cogency with respect to conclusive presumptions which operate to deprive individuals of their rights or infringe upon constitutionally protected areas. *Heiner* v. *Donnan*, [fol. 51-L] 285 US 312, 76 L ed 772, 52 S Ct 358 (1932); *Schlesinger* v. *Wisconsin*, 270 US 230, 70 L ed 557, 46 S Ct 260, 43 ALR 1224; *City of New Port Richey* v. *Fidelity & Deposit Co. of Maryland*, 105 F2d 348 (5th Cir 1939), 123 ALR 1352; *Comm'r of Internal Revenue* v. *Clark*, 202 F2d 94 (7th Cir 1953). See, also, 12 Am Jur 317-18, Constitutional Law § 625.

In *Heiner* v. *Donnan*, supra, the court dealt with a provision of the Internal Revenue Code which made transfer of a gift two years prior to death conclusively presumed to be made in contemplation of death. It was held that the presumption violated the prohibition of the Fifth Amendment against the taking of property without due process of law and the presumption was characterized by Mr. Justice Sutherland as follows:

> "• • • whether the • • • presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, • • •." (76 L ed at 780)

All parties concede the extreme degree of the mental incompetency of the deceased veteran; yet, the government's only claim to his property (in this instance, *not unexpended funds received from United States pensions*, but an inheritance received from his brother) rests solely upon a conclusive presumption that his presence in the hospital at death resulted in a "valid contract for the disposition • • • of all property • • • owned by [the] decedent" at the time of his death.

We find in the situation presented by Warpouske's history and the employment of the presumption relied upon by appellant, a striking exemplification of an irra- [fol. 51-M] tional and unnatural relationship between the proven fact of his death in a government hospital as an incompetent and the ultimate fact presumed. It is one having all the elements which have prompted courts to

deplore such a mandate as an arbitrary and unreal artifice, contravening the Due Process Clauses of the Fifth and Fourteenth Amendments. In this matter, when applied to Warpouske and other unfortunates of the same category, it is, as said by Mr. Justice Sutherland in *Heiner* v. *Donnan*, supra, "an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality."

The presumption here excludes consideration of all the circumstances which brought Warpouske to the hospital and made him an involuntary patient there from the time of his entry until the day of his death. We are now asked to presume, however, that a man totally noncompos mentis voluntarily accepted the benefits the hospital bestowed (and to which he was entitled under the law, without charge) and who, because of his failure to make a testamentary disposition of his estate while in the hospital, and to further presume that by his enforced silence he waived his right so to do in favor of the government. The death of the veteran in the hospital, although helpless and there without his direction or knowledge, is thus made the sole factor which activates the absolute presumption that he made "a valid contract for the disposition" of his property to the United States (Secs. 17, 17a) and which, if applied, forecloses any opportunity to present evidence that the veteran was wanting in mental capacity either then or for years before, to make any kind of a valid contract or will.

[fol. 51-N] That the creation of this contract with Warpouske might well be a proper subject for judicial inquiry despite the conclusive presumption written into the Act of 1941 is strongly indicated by Judge Tolin in *U. S.* v. *Security-First Nat. Bank of Los Angeles*, supra (130 F Sup 521), by his observation at page 522, reading:

> "No party has challenged the validity of this agreement on the ground that there was no agreement as to the footnoted matter, and although a footnote to an application for admission to a hospital is not an exemplary way to establish privity of contract, in the absence of challenge, it is sufficient. Considering that applicants for domiciliary care in a hospital are

usually sick and often lacking acute mental perception, the force of a footnote to the entry application (the footnote purporting to create a special contract of unusual character) might be considerably diminished, and frequently destroyed by a careful inquiry into the circumstances of the execution of the application for domiciliary care. * * * That contracts of this character may be valid if properly entered into, is firmly established by the Supreme Court adjudication."

We do not think the Congress ever intended to apply the presumption found in the Act of 1941 to a situation akin to what we find here, for to thus appropriate the property of the estate of an utterly helpless veteran by the arbitrary device of "conclusive presumption" is basicallly contrary to the traditional solicitude of the government for its disabled war veterans.

There is an even more cogent reason for assuming that the position taken by appellant's counsel is not consonant [fol. 51-O] with Congressional intent. To conclude this matter in favor of the government by approving its claim to Warpouske's inherited money solely because of the conclusive presumption it invokes, would, in fact, transform the status of the government claim in the instant matter to one closely approaching the exercise of an arbitrary right of escheat, rather than upon a claim of right derived from contract.

We have no doubt that one of the motivations for the legislative design upon which the Act of 1941 is predicated, in terms of contract, was the Congressional consciousness of its want of constitutional power to exercise a right of escheat in an estate, knowing full well that all matters concerning the devolution of property are reserved by the Tenth Amendment to the several states. *Mager* v. *Grima*, 49 US 490, 493, 12 L ed 1168; *Pennoyer* v. *Neff*, 95 US 714, 722, 24 L ed 565; *U. S.* v. *Fox*, 94 US 315, 320, 24 L ed 192; *U. S.* v. *Perkins*, 163 US 625, 628, 41 L ed 287, 16 S Ct 1073. See, also, *U. S.* v. *Security-First Nat. Bank of Los Angeles*, supra (130 F Sup at 523).

Notwithstanding the multiple holdings of the federal courts that the Act of 1941 envisions a contractual relationship, counsel for appellant would have us believe the contrary and to do so places reliance upon the decisions of state courts.

But before we give critical attention to the several cases which appellant's counsel urges upon us, it is important that we take notice of the two separate and distinct acts under which the government can lay claim to the estates of veterans dying intestate in a government facility without heirs surviving them.

The first, in the order of their enactment, was § 450(3), 38 USCA. This subsection was added to § 450, supra, by Act of July 3, 1930, and we refer to it as the Act of [fol. 51-P] 1930. The other is the Act of 1941, under which the federal government lays its claim against the estate of Warpouske.

Both Acts rely upon two different theories of right as a basis for the governmental claim of ownership and each reaches an entirely different species of property in the veteran's estate. Moreover, the property recovered under the Act of 1930 goes into an entirely different fund than that obtained under the Act of 1941.

The Act of 1930 implements a recoupment of any unused or accrued funds derived from federal pensions or other forms of veteran gratuity, whereas, the Act of 1941 is designed to place in the government's reach any other personal property of the veteran no matter from whence derived. Hence, we have here the relinquishment to the government without contest the sum of $1,134.25, earlier referred to as being funds representing unexpended pension benefits. This was correctly done pursuant to the Act of 1930. But as to the balance of decedent's estate, represented solely by the inheritance received from his brother, appellant claims ownership, not under the Act of 1930, but under the Act of 1941, on the theory of a conclusive contract.

No element of contract is present or required under the earlier Act of 1930, as is evident from a reading of the pertinent part of Sec 450(3):

"• • • That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said Acts, which under the law of the State wherein the beneficiary had his last legal residence [fol. 51-Q] would escheat to the State, shall escheat to the United States and shall be returned by such guardian, • • • to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance or pension."

The obvious intent, purpose and meaning of the foregoing section of the Act of 1930 is that the federal government has not made the gift of a pension or other gratuity absolute and complete, but has retained in itself at all times a contingent reversionary interest, which under the circumstances stipulated in Sec 450(3), would vest the residue of the gift in the government to the exclusion of any claim of escheat by the state. *In re Lindquist's Estate*, 25 Cal2d 697, 154 P2d 879 (1944). No claim of contract is involved. The right to the continuing interest of the government to the unused portions of such gratuities attaches from the date of the initial disbursement of its bounty. See *Abbott* v. *Morgenthau*, 68 App DC 83, 93 F2d 242.

Unfortunately, all courts have not observed this clear and important distinction between what the government can properly claim under the Act of 1941 and can properly obtain under the Act of 1930, nor have they noted the difference in the basic theories around which each of said Acts is separately built. This is found to be particularly true when one examines the decisions of the state courts, and is exemplified by the cases cited to us by appellant. To the extent that they do not adjudicate claims made to property under the Act of 1941, but are rather addressed to the recovery of the kind of property specified in the Act of 1930, they may be laid aside.

With these matters in mind, we now turn to a consideration of the cases which appellant has marshaled.

[fol. 51-R] *In re Gonsky's Estate*, 79 ND 123 55 NW2d 60 (1952), the estate "consisted of United States savings bonds and cash all derived from payments to him [Gonsky] during his lifetime by the United States as retirement for disability as a regular army person." (55 NW2d, supra, at 61).

In re Skriziszouski's Estate, 382 Pa 634, 116 A2d 841 (1955), again, we find that the decedent's estate amounting to $21,905, "was composed of money received from the Federal Government through the Veterans' Administration, plus interest earned thereon," except for $50 received as a bonus from the Commonwealth of Pennsylvania (116 A2d, supra, at 842).

The same situation as to the character of the estate left by decedent prevailed *In re Campbell's Estate*, 195 Misc 520, 89 NYS2d 310 (1949), where the surrogate court observes, at p 311: "His [Campbell's] estate consists of assets derived solely from pensions paid to the decedent through his committees by the United States Government." So, too, in the *Matter of the Estate of Alexander Zakowski* (1950) (an unreported opinion of the Circuit Court for Wayne County, Michigan, copy of which is incorporated in appellant's brief by the appendix).

Thus, in every state case to which we make reference in the preceding paragraphs, the government's reversionary right to recovery of unused bounties is made clear by the provisions of the Act of 1930 and is the explanation for those decisions. Here, however, the government reaches not for the residue of pension funds, but for property which came to Wapouske by inheritance. Obviously, the foregoing cases do not speak to the contractual [fol. 51-S] aspect of a claim arising under the Act of 1941, nor, for the same reason, do they discuss or refer to the conclusive presumption clause of the Act of 1941 upon which appellant rests its case. The only element common to the last-mentioned cases and the one at bar is that the decedents were mentally incompetent, a factor which in no way militates against the government's reserved right to affect a recovery under the Act of 1930.

Appellant also points to *In re Bonner's Estate*, 192 Misc 753, 80 NYS2d 122 (1948), a decision of the surrogate

court of New York, but never appealed. We have reserved comment on that case because it more nearly proximates the factual situation disclosed by the record in the case at bar. The decedent, Bonner, was an adjudicated incompetent and an inmate of veterans hospitals continuously from 1922 until his death in 1944. He left assets consisting of Adjusted Service Bonds of the value of $1,550 and other assets worth $3,350.21 from an undisclosed source and in the opinion referred to as the "distributable balance," and, therefore, in the property aspect similar to Warpouske's estate. The court rests its conclusion favorable to the government upon both the Act of 1930 and the Act of 1941.

A too casual reading of the decision might warrant a conclusion that it supports the government's position in this appeal. But critical analysis nullifies its value here. As to the service bonds, a form of governmental gratuity, the court ruled correctly.

Concerning the rest of the estate, i.e., the "distributable balance," which came to Bonner from other than governmental sources, the court makes this arresting and palpably incorrect statement at p 126:

> "• • • Apart from the Adjusted Service Bonds [fol. 51-T] which were paid to decedent as additional compensation for his service in World War I, it is not claimed that the distributable balance herein consists of the residue of governmental gifts. *This fact, however, is not controlling.* • • •" (Emphasis supplied.),

citing as its sole authority *Matter of McGhee,* 149 Misc 713, 268 NYS 79 (1932), aff'd 239 App Div 763, 264 NYS 903, aff'd 262 NY 686, 188 NE 121.

But McGhee fails to support such a sweeping conclusion. A reading of McGhee discloses two interesting and distinguishing differences from the Bonner case and the present appeal. McGhee, a veteran of the Civil War, was a resident of the National Military Home at Bath, New York. When he entered that facility in 1929, he executed a written application which was, in fact, a contract leaving to the government the proceeds of his estate not dis-

posed of by will and embodying the terms of what was then Sec 136 of 24 USCA. That Act was the predecessor to the present Act of 1941. The claim of the government, rightly adjudicated in its favor, rested solely on a written agreement as then required by the Act as a condition to his entry. McGhee died intestate and without heirs. No issue was raised concerning his mental capacity to make such a contract, nor does the decision suggest that he was at any time incompetent.

We find nothing in the cases cited to us by appellant which is decisive here and for the reasons previously stated, hold that the Act of 1941 is inoperative when applied to the estate of Adam B. Warpouske.

Affirmed.

[fol. 52] IN THE
SUPREME COURT OF OREGON

* * * *

Appeal from MULTNOMAH County

In the Matter of the Estate of
Adam B. Warpouske, deceased.

PORTLAND TRUST AND SAVINGS BANK, Administrator of the Estate of Adam B. Warpouske, deceased,
RESPONDENT

STATE OF OREGON acting by and through the State Land Board, RESPONDENT

v.

UNITED STATES OF AMERICA as Trustee for the sole use and benefit of the General Post Fund, APPELLANT

JUDGMENT—May 18, 1960

This cause on April 13, 1960, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is not error as alleged.

IT THEREFORE IS CONSIDERED, ORDERED and DECREED that the decree of the court below rendered and entered in this cause be and the same is in all things affirmed.

The appellant having given an undertaking on appeal with United States Fidelity and Guaranty Company conditioned that appellant will pay all damages, costs and disbursements which may be awarded against it on the appeal,

IT THEREFORE IS ORDERED that respondent State of Oregon have and recover of and from appellant and its surety its costs and disbursements in this Court taxed at $30.

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter decree in accordance herewith.

[fol. 53] Clerk's Certificate to Foregoing Transcript
Omitted in Printing

[fol. 54] SUPREME COURT OF THE UNITED STATES

No. 329, October Term, 1960

UNITED STATES, ETC., ET AL., PETITIONERS,

vs.

OREGON

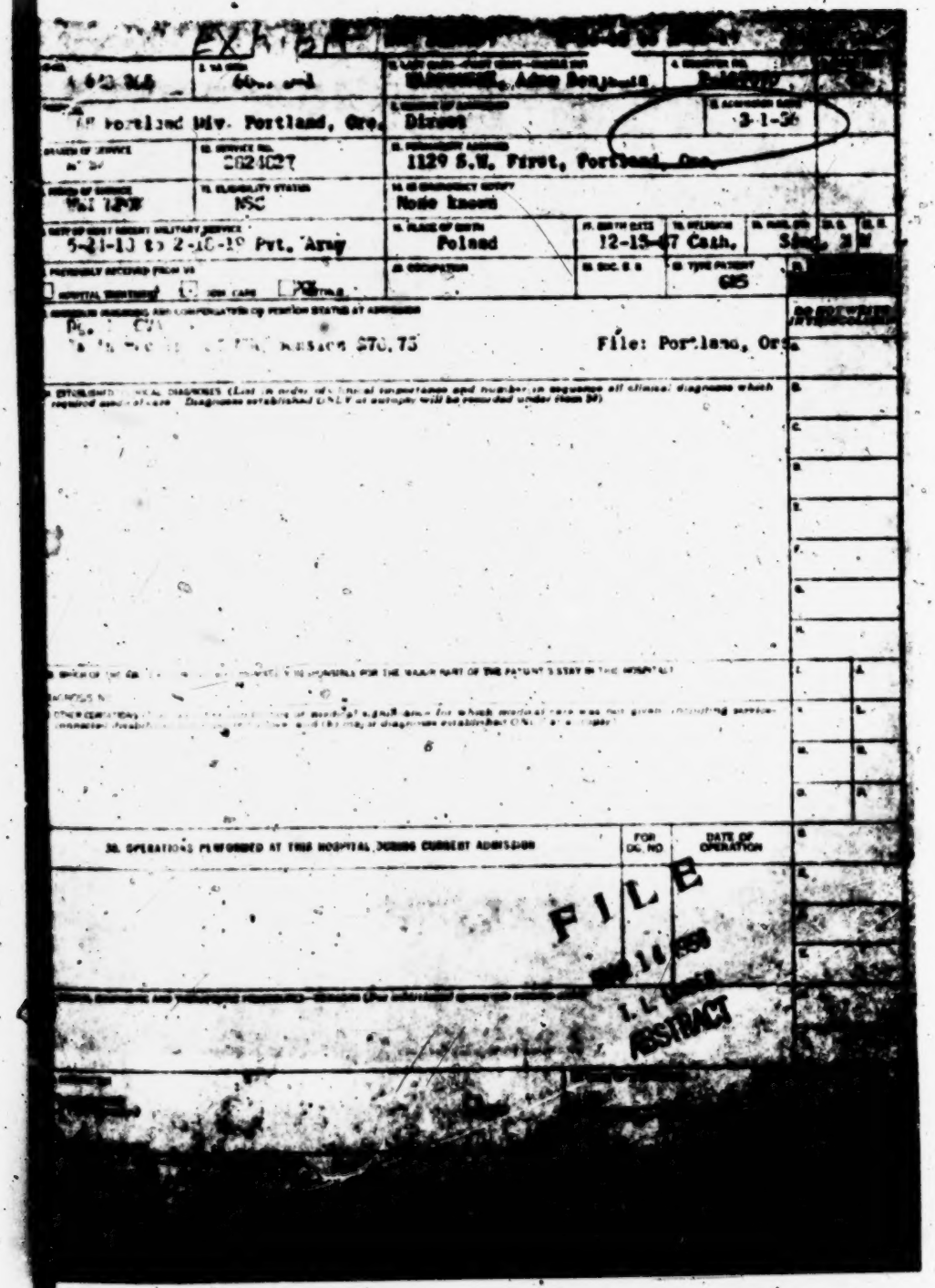
ORDER ALLOWING CERTIORARI—November 7, 1960.

The petition herein for a writ of certiorari to the Supreme Court of the State of Oregon is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

• • • •

[fol. 72] EXHIBIT 1



[fols. 74-75] * * *

[fol. 76] EXHIBIT 3

EXCERPTS FROM PHYSICAL AND NEUROPSYCHIATRIC EXAMINATION

* * * * *

MARITAL HISTORY Single. He has never been engaged. When asked if he had ever thought seriously about getting married, he answered that he had before the War and when pressed for the reason, he stated that it was for the purpose of getting a home and have someone to help, at the same time someone to help him. He made a further statement to the effect that he has always been very particular about who should help him, which gave the examiner the impression that he meant that he did not readily make friends with everyone.

COMPENSATION "The veteran's disability was rated temporary total from November 29, 1924, because of his incompetency, due to dementia precox, hebephrenic type. His guardian is G. E. Ostrander, 814 No. 8th Street, Sheboygan, Wis. The claimant receives an institutional award of $20.00 a month, which will be forwarded to your institution until June 30, 1933. At that time payments will be discontinued, as the veteran's disability was not found to exist to a 10% degree within two years from date of discharge, when his folder was reviewed under Public #2, 73d Congress."
A later report states the institutional award of $20.00 will continue until Oct. 31, 1933.

PRESENT ILLNESS The following is taken from report of the Veterans Adm. of Milwaukee dated June 5, 1933:

"The veteran applied for compensation on December 3, 1924, for a mental disability, total degree. Other information on application states that he was born on December 25, 1893, in Russian-Poland, that his occupation before service was farming from 1910 to 1918; two employers before his enlistment were, Henry Olson, Wautoma, Wisconsin, for three falls, and August Kohnke, Princeton, Wisconsin, from April to July, 1917. After discharge

from the army, he worked as a papermaker, from 1919 to 1920, and as a section hand from April 1924 to August 1924. The veteran's first hospitalization was November 29, 1924, when he was admitted to the Wisconsin Psychiatric Institute, Mendota. At that time he was quiet, accessible, cooperative, expressed delusions of persecution, I. Q. 65, and his insight into his condition was poor. He was diagnosed dementia precox, hebephrenic type. He was examined at that institution May 27, 1925. He complained that his 'body was all wrong and that the blood was leaving his body.' He evinced auditory hallucinations and his diagnosis remained the same. The examination of June 5, 1926, revealed no change in the veteran's condition. However, he made a good adjustment to hospitalization, but was intellectually and emotionally deteriorated; retained the delusion that he was being poisoned, and that the poison caused an eruption on his head. The subsequent progress note indicates no change in his condition, except that at times he was profane and excited, replied to questions readily, but was distractible. During the summer of 1931, worked in the dining room of one of the cottages, and was later detailed to work as a painter, and in October, of 1931, he was granted a ground parole. In January 1932, he became disturbed, and was given hydrotherapy for a few weeks until condition subsided. In August 1932, he was returned to the painting detail, where his work was satisfactory and there appeared to be a slight improvement in his condition. The progress note of February 28, 1933, advises that his work on the dining room detail was also satisfactory and that his behavior on ground parole was good. He remained delusional, talked to himself, and the diagnosis of dementia precox, hebephrenic type, was continued. He remained at the Wisconsin Memorial Hospital, Mendota, Wisconsin, until the transfer to your facility, May 10, 1933."

WARPECHOWSKI, Steve SC C-1,196,214 Reg. 1206 [fols. 77-80] • • •

[fol. 81] EXHIBIT 4

Exhibit 4

APPLICATION FOR HOSPITAL TREATMENT OR DOMICILIARY CARE

Penal Provisions Applicable to Title I, Public No. 2, 72d Congress

SECTION 35. Any person who shall knowingly make or cause to be made, or conspire, combine, aid or abet in, agree to, arrange for, or in any way procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for bounty under this Act, shall forfeit all rights, claims, and bounty under this Act, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

REDUCTION OF PENSION, COMPENSATION, OR EMERGENCY OFFICERS' RETIREMENT PAY WHILE RECEIVING HOSPITAL OR DOMICILIARY CARE

Where any disabled veteran having neither wife, child, nor dependent parent is being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof, the pension, compensation, or emergency officers' retirement pay shall not exceed $15 per month, provided that the amount payable for such disabled veteran entitled to pension for disability the result of injury or disease incurred after active military or naval service shall not exceed $20 per month, and provided further, that where any disabled veteran who is being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof, has a wife, child, or dependent parent the pension, compensation, or emergency officers' retirement pay may, in the discretion of the Administrator, be apportioned on behalf of such wife, child, or dependent parent, in accordance with instructions issued by the Administrator.

As to pension payable on account of service prior to the Spanish-American War, the provisions of this paragraph shall apply only in cases where the disabled veteran is being furnished hospital treatment, institutional or domiciliary care by the Veterans Administration, provided, however, that the amount payable while the veteran is in the institution shall be $15 per month in all cases.

The applicant should forward this form, when fully executed, with a certified copy of his discharge from last period of service, to the Veterans Administration facility nearest his home, which is located at BILOXI, MISS. (Location of facility)

1. I WARBOUSES, (Print) (Last name) ADAM (First name) B. (Middle name) C No 1,639,896

hereby apply for admission to a Veterans Administration facility for (hospital treatment) (domiciliary care)*.

Dec. 25, 1887 (Date of birth) white (Color) male (Sex) Russia Poland (Place of birth) No permanent address (Present place of residence)

2. My entire service in the active military or naval service of the United States has been as follows:

Entered: Date	Entered: Place	Service No.	Discharged: Date	Discharged: Place	Name and designation	Character of Discharge
4-18	Rhinelander, Wis.	2824627	2-8-19	Cp. Funston, Ks.	Pvt. Ord. Dpt., 69th Inf.	Hon.

(COPIED FROM COPY OF DISCHARGE)

Note.—If you served under a name other than the one used in this application, indicate the name under which you served and the period of service.

3. Have you filed claim for other benefits? Yes (Yes or no) If "Yes" at what Veterans Administration office? Dayton, O. (Location)

What office has your case file? WOOD, WISCONSIN

4. (a) Do you receive pension? NO (Yes or no) Amount per month, $ (b) Do you receive compensation? NO (Yes or no) Amount per month, $ (c) Do you receive retirement pay? NO (Yes or no) Amount per month, $ (d) Do you receive Government Insurance pay? NO (Yes or no) Amount per month, $ (e) From what other source do you receive income? NONE (Nature of income) Amount per month, $

5. Value of all property, real and personal, including cash on hand and in bank

Description and Location of Property	Encumbrance on Property	Monthly Income from Property
None		

* Strike out inapplicable words or phrases.

Exhibit

6. Are you single? Yes Married ..... Widowed? ..... Divorced? No (a) If married, are you living with your wife? ..... (b) Have you any child or children under 18 years of age? ..... If "Yes," state number of children ..... and their ages ..... (c) Have you other persons dependent upon you? No If "Yes," state relationships .....

7. Give the name and address of your [redacted]

Thomas Stedman (Friend) Rhinelander, Wisconsin

8. Are you entitled to hospital care by membership in a lodge, society, community group treatment plan, etc., or as a beneficiary of an insurance company, workmen's compensation commission, industrial accident board, etc.? No If "Yes," give name of agency or organization .....

9. Are you financially able to pay the necessary expenses of hospital or domiciliary care? No

10. Are you able to pay transportation to and from a Veterans Administration facility? No abt 30 da., disch.

11. (a) Have you received hospital care as a patient of the Veterans Administration? Yes If "Yes," state when Nov 21,1939 and where WOOD, WIS. (Has discharge card & MHB) 5 or 6 yrs ago

(b) Have you received domiciliary care in a Veterans Administration facility? Yes If "Yes," state when ..... and where Dayton, O. Wood, Wis. Has disch. from Wisc.Veterans Home(State Home) AOE

(c) Have you within the last 12 months, while hospitalized as a patient of the Veterans Administration left the hospital: (1) Without official leave; (2) against medical advice, or, (3) been discharged for any disciplinary reason? No (d) Have you within the last 12 months, while under domiciliary care in any Veterans Administration facility, (1) been dropped from the rolls for absence without leave or demanding papers, or, (2) have you been given an enforced furlough, or, (3) requested and received your discharge while under sentence or on an enforced furlough? NO (e) If your answer to either (c) or (d) above is "Yes," state when ..... where ..... and why .....

12. I agree that, in the event of my death while under care, leaving no heirs at law nor next of kin, all personal property owned by me at the time of my death, including money or choses in action held by me and not disposed of by will, whether such property be the proceeds of pension, compensation, retirement pay, or life insurance, or otherwise derived, shall vest in and become the property of the Veterans' Administration for the sole use and benefit of the post fund; and that all my personal property shall upon my death, while under care, at once pass to and vest in the Veterans Administration subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within 5 years after my death.

I hereby certify that I {have had read to me}* and understand all questions and answers on this form; that the answers to all questions are true and complete to the best of my knowledge and belief; and that the foregoing questions and answers are made as a part hereof with full knowledge of the penalty provided for making a false statement as to material fact in this application. The penal provisions appearing on page 1 hereof have been read {to me}* me, and are fully understood.

Witness to signature by mark (X)

1. ..... (Signature)
..... (Address)

2. ..... (Signature)
..... (Address)

Adam B Wozniewski (Signature of applicant or representative)

Post office address No permanent address (Number) (Street) (City) (State)

Subscribed and sworn to before me this 19th day of January, 19 40 by Adam B. Wozniewski, claimant, to whom the statements herein were fully made known and explained. I certify that the questions and answers thereto have, in my presence, been {read to}* the claimant.

[SEAL]

Mary A. Reddington
(Authority) VETERANS ADMINISTRATION (Grade)

* Strike out inapplicable words or phrases.

FORM 4505

[fol. 82] • • •

[fol. 83] RE: WARPOUSKE, Adam B., C-1 628 265

The above veteran was admitted to the Domiciliary section of this facility yesterday afternoon, January 19, 1940. He was very uncooperative during admission. This morning he came to this office pretending to be sick. He was referred to Dr. Andersen for a Neuropsychiatric examination and to Dr. Rothman for a heart examination. While the requests for consultation were being written, the veteran threw his meal ticket at me and said he was leaving, therefore no further examination will be made since this man is leaving.

/s/ P. P. Haslitt
P. P. HASLITT, M.D.

VAF, Biloxi, Miss.,
January 20, 1940.

[fols. 84-85] • • •

[fol. 86] EXHIBIT 5

EXCERPT FROM MEDICAL CERTIFICATE

* * * * *

(4) Diagnosis: Psychosis, undiagnosed.
Arthritis lumbar spine.
[ ]
Dental Cavies V. U. bilateral mild

(5) Strike the clauses not applicable: The applicant (is) (is not) ambulant. He (is) (is not) mentally competent. He (will) (will not) need an attendant during his travel. The proposed attendant's name is .....; address .....

(Date) Feb. 8, 1940

(Signature of examining physician) J. A. Eisenberg

(Street) VAF (City) Dayton (State) Ohio

[fol. 87] * * *

[fol. 88] Exhibit 5A

VETERANS ADMINISTRATION
(See August 1941)

NOV 30 8 1

To: Wood Wisconsin VETERANS ADMINISTRATION

Read carefully, INSTRUCTIONS, page 2, and "Additional," page 3, when the space under item 8 is not sufficient for entries.

CHANGE OF CONDITION, ADEQUATE FOR RATING, REFERRED FOR ACTION

REPORT OF PHYSICAL EXAMINATION

BY

C. A. Bush
Signature of certifying officer

Date of admission to hospital February 8, 1940 C-No. 1,628,265
(See par. 7, page 2)

Date of discharge from hospital February 20, 1940 (See par. 9, page 2) B-63,360

1. Claimant's name HARPOKHEE, Adam B. (Last) (First) (Middle) Address 19 Murray St. Dayton, Ohio

2. Rank and organization Pvt. Sup. Co. 69th. Inf. Enlistment 5/24/18 (Date)

Discharge 1/17/19 (Date) 3. Birthplace Poland

Age 52 Race White Color of eyes - Color of hair -

4. Height 67½ inches. Weight (weigh him) 131 Highest weight in past year 175 Normal weight 155

5. Examined V.A., Dayton, Ohio: Hospitalized (Place) (Begun—date) (Ended—date)

6. Permanent marks and scars other than described below: None

7. Origin and date of incurrence of disability as alleged by claimant: Patient is very belligerent and very uncooperative. To obtain history one must persistently ask questions and if he chooses to answer, he does. States that he has arthritis, heart trouble, stomach trouble and nervousness. States he gets electric shocks in the flesh of his arms especially, coming out from the bone. Has his own stethescope to listen to his heart. Takes his own IQS; strychnine gr. 1/3 phenacetin, digitalis and etc. Doesn't want hospital, but just domiciliary care.

8. Brief medical and industrial history:
(In first examinations, this history must cover sufficient time preceding date of discharge from military service. When previous examinations have been made, the examiner will record only the medical and industrial history covering the period since the most recent previous examination, thereby bringing it up to date of his examination. If, for any reason, such history can not be obtained, the reason therefor must be stated. The data to be noted are: When, where, by whom, and for what condition has the veteran received medical treatment? When, where, by whom, and at what occupation and wages was he employed, and how continuous was the employment?)

No fractures or serious injuries.
No pneumonia or tuberculosis.

No operations:

Post-War Occupations: Janitor, odd jobs.

85. Ex. 5 (a) ABSTRACT CARD

[fols. 89-99] * * *

[fol. 100] EXHIBIT 6A

EXCERPT FROM MEDICAL CERTIFICATE

A careful physical (including mental) examination of the applicant discloses these findings and diagnosis:

(1) Brief history:

Born in Poland, Dec. 25, 1887. Came to U. S. at 10, little education. For 20 years worked as painter and decorator, was never married. No history of venereal disease. Patient in Winnebago State Hospital from Aug. 3, 1939 to Oct. 4, 1939 as a regularly committed patient from Waupaca County as a resident of Oneida County. Diagnosis: Amyotrophic Lateral Sclerosis. Transferred to Veterans Facility; was returned on Sept. 22, 1941.

(2) Symptoms:

Patient is irritable, exhibits antisocial behavior, is seclusive, demanding, has grandiose delusions believing that he has made many inventions such as a radio set without wires, experiences auditory and visual hallucinations and has delusions of persecution which have been in existence for many years. He has many physical complaints.

* * * *

(4) Diagnosis: Dementia Praecox—Paranoid Type.

(5) Strike the clauses not applicable: The applicant (is) ambulant. He (is not) mentally competent. He (will) need an attendant during his travel. The proposed attendant's name is William Noholty; address Winnebago, Wisconsin.

(Date) Feb. 1, 1943

(Signature of examining physician) J. T. Pitersik
(Street) (City) Winnebago (State) Wisconsin

[fol. 101] EXHIBIT 6B

[SEAL] THE STATE OF WISCONSIN
WINNEBAGO STATE HOSPITAL
Winnebago

Oct. 8, 1942

Mr. Albert R. Freeman
Contact Officer
Veterans Administration
Wood, Wisconsin

In Re: Adam B. Warpouske
C-1 628 265

Dear sir:

Your letter of Aug. 10, 1942 regarding Adam B. Warpouske, a patient in this hospital, has been received. Our reply is delayed due to making a diagnosis in this case.

Adam B. Warpouske, 56, single, Catholic, painter, was admitted here Aug. 3, 1939 as a committed patient from Waupaca County, residence Oneida County. He was transferred to the Veterans Facility at Wood, Wisconsin on Oct. 4, 1939, and was returned here on Sept. 22, 1941 and has been in continuous residence since the latter date.

The family history is not pertinent. The patient was born in Poland, Dec. 25, 1885. He immigrated to this country with his father at the age of 10 and lived with his father on a farm in Marathon County. He finished the second reader. The patient was in the U. S. Army and has been at the Veterans Home at Waupaca, and also has been a patient in the Veterans Bureau at Wood, Wisconsin.

Mentally, this patient is irritable, has many ideas of persecution, and feels that many people have it in for him. He feels that he does not belong in a mental hospital because he is normal. He is definitely of the opinion that army service has impaired his health.

Physical examination reveals a fairly well developed and nourished white male. Blood pressure 118/70. Otherwise, physical examination negative. Laboratory examinations are within normal limits.

The diagnosis made in this case is Psychoneurosis—Neurasthenic Type.

We are enclosing a list of the veterans in the institution at the present time.

Very truly yours,

/s/ Byron J. Hughes
Supt.

RM:RS
Enc.

[fol. 102] EXHIBIT 6C

EXCERPTS FROM REQUEST FOR PHYSICAL EXAMINATION

* * * *

REMARKS:

Request examination of veteran by an neuropsychiatrist. Report to show background of case, reason for being committed to Winnebago State Hospital, whether supervision is required, why veteran has been confined to Winnebago State Hospital for such a long time, adjustment before hospitalization and what is veteran doing now at Winnebago State Hospital, clinical and laboratory findings and diagnosis.

Note letter from Winnebago Hospital dated 10-8-42, in file.

NOT SERVICE CONNECTED

PSYCHONEUROSIS, NEURASTHENIA, SEVERE.
MENTAL DEFICIENCY, MORON, COMPETENT.
ASTIGMATISM, CORRECTED.

THIS CANCELS ALL PREVIOUS 2587's

(Originating office) WOOD, WISCONSIN AR:ast

(Date) 10-19-42

(Signature and title) DAVID E. JUDE, Adj. Officer

[fol. 103] EXHIBIT 6D

VETERANS ADMINISTRATION
DOWNEY, ILLINOIS

Admitted February 23, 1943

EXCERPTS FROM REPORT OF NEUROPSYCHIATRIC EXAMINATION
(FIRST ADMISSION)

* * * * *

[fol. 104] PREVIOUS HOSPITALIZATIONS:

1. National Home Hospital, Wisconsin (VA, Wood) October, 1930, chronic arthritis, left knee joint, with exostosis at right shoulder. Vericose veins, bilateral, myopia and astigmatism.

2. VA, Dayton, Ohio, September 7, 1932 to July 1934, Diagnosis: hysteria severe, with conversions; marked tremor of legs and thighs, which do not correspond to any organic nervous pathology; and tachycardia.

3. VA, Los Angeles, California, November 26, 1934 to May 22, 1935. Diagnosis: C.P.I. with inadequate personality; psychoneurosis, hysteria, moderately severe; arthritis, chronic, hypertrophic; cervical, dorsal and lumbar spine, with slight limitation of motion; and colitis, chronic, spastic.

4. VA, Dayton, Ohio, May 29, 1935 to January 3, 1936, diagnosis: Hysteria, severe, with conversions, competent; tachycardia, mild.

5. VA, Wood, Wisconsin, November 2, 1936. Goitre, cystic, mild, competent; varicose veins, bilateral, moderate symptoms. (examination)

6. VA, Wood, Wisconsin, examination, April 28, 1937. Chronic catarrhal otitis media; myopia; astigmatism; presbyopia; deviation, nasal septum; blepharon, right eye; myocardial insufficiency of chronic invalid tendencies; no manifest pulmonary pathology; arthritis, left knee; BMR; plus 49.

[fol. 105] 7. State Hospital, Winnebago, Wisconsin, August 3, 1939 to October 4, 1939. Diagnoses: Psychosis, with other somatic diseases—amytrophic lateral sclerosis.

8. VA, Wood, Wisconsin, October 4 to November 22, 1939. Diagnoses: Psychoneurosis neurosthenia, severe, and Mental deficiency, moron, competent.

9. Wisconsin Veterans' Home, Waupaca, Wisconsin, December 1, 1939 to January 16, 1940. Diagnoses: Psychoneurosis, mild; arthritis, shoulder, moderate; varicose veins, left, severe; sacro-iliac osteo-arthritis, mild.

10. VA, Biloxi, Mississippi, January 19-20, 1940. Diagnoses: Neuro-circulatory asthenia, mild; C.P.I. with social and economic inadjustability.

11. VA, Dayton, Ohio, February 8 to February 20, 1940. Diagnoses: C.P.I. with conscious malingering, without psychosis, and competent; arthritis, chronic, lumbar spine; varicose veins, bilateral, mild.

12. State Hospital, Winnebago, Wisconsin, September 22, 1941 to February 23, 1943. Diagnoses on admission: Psycho-neurosis neurosthenic type. Diagnosis on discharge: Dementia Praecox, paranoid type, and incompetent.

13. VA, Downey, Illinois, February 23, 1943. Present hospitalization.

PRESENT ILLNESS:

Patient alleges that his disability started while in the service. He complained of a sore back and a sick stomach when he returned to Rhinelander, Wisconsin after his discharge. He took tablets and dieted for this. Affidavits of friends state he was "thin and weak and could not work regularly". He resumed painting, on and off, not more than three months at a time, up to 1929, when patient felt that he was too sick to work. He bought his own medicine and prescribed for himself; digitalis, strychnine, bromides, etc. In 1929, he went to the Soldier's Home, Milwaukee, Wisconsin, (now VA, Wood) for one week. He traded a watch with a fellow; got into trouble, and left. He received disability allowance, 1930 to 1933, and

went south. He was examined at the National Home Hospital, Wisconsin (VA, Wood), October 1930, complaining of headaches, bad eyesight, broken left knee joint and rheumatism, right shoulder. Was diagnosed as stated above, and it was felt that hospitalization was not indicated. After his disability allowance was spent he entered VA, Dayton, Ohio, September 7, 1932 and was diagnosed as Hysteria, severe, with conversions, and marked tremor of, legs and thighs which to not correspond to any organic nervous pathology; and tachycardia. He had leave from Dayton from May 23 to July 1, 1934. Meanwhile his pension and compensation claim was rejected November 21, 1933, which he appealed on numerous occasions, getting affidavits at various times. His appeals of January 25, 1934, September 1, 1934, September 4, 1934, January 8, 1935, February 23, 1935, December 1, 1936, July 19, 1937 and October 4, 1938 and November 1, 1939, also being rejected. Veteran entered VA, Los Angeles, California, November 26, 1934 and was diagnosed C.P.I. with inadequate personality; psychoneurosis hysteria, and others. He was placed on domiciliary status January 8, 1935 and discharged May 22, 1935. Veteran was again admitted to VA, Dayton, Ohio, May 29, 1935; diagnosis, hysteria, severe, with conversions, competent. He went on leave Nov. 29, 1935 and was discharged January 23, 1936 at his own request. He returned to Rhinelander for affidavits and medical certificates. These considered him "as totally disabled, mentally and physically", according [fol. 106] to one physician. As a case of "auricular fibrillation" by another, and as "old chronic arthritis, left knee, right shoulder, patient rapidly developing into a neuropathic condition, due to worries of his disability" by a third physician. Patient was examined at VA, Wood, November 2, 1936 and April 28, 1937. On the latter occasion B.M.R. was plus 49. He returned to Rhinelander in August, 1937 and again obtained affidavits, including a physician's affidavit, whose impression was "Psychoneurosis, neurosthenia, moderately severe, and that he is unable to adjust himself socially".

Veteran was admitted to State Hospital, Winnebago, Wisconsin, September 23, 1939 and transferred to VA, Wood

where diagnosis "amyotrophic lateral sclerosis, mentally incompetent" was given October 4, 1939. At this time he stated that he heard himself advertised over the radio in a disparaging manner, but refused to give specific details. He claims he was injured by spinal punctures. He was observed on a closed ward and diagnosis of psychoneurosis, neurosthenia, severe, and mental deficiency, moron, competent, was made. Examiner believed patient was severely incapacitated as regards industrial adaptability. He was discharged November 22, 1939. He entered the Wisconsin Veterans Home, Waupaca, December 1, 1939, and was discharged January 16, 1940 at his own request. Diagnosis: psychoneurosis, mild, and others. He went south and was admitted to VA, Biloxi, Mississippi, January 19, 1940, but went AWOL the next day and he was disciplinarily discharged. Diagnosed: neurocirculatory asthenia, mild; C.P.I. with social and economic inadjustability. Claimant is noted to have been accepted for domiciliary care but refused to certify to the truth of answers to questions, and left, rather than submit to an N.P. examination. He then went to Dayton and was admitted February 8, 1940 as an emergency. Diagnosis: psychosis, undiagnosed, but was discharged as the emergency was over and the Biloxi discharge was disciplinary. Diagnosis: C.P.I. with conscious malingering, without psychosis, and competent. He was described as very belligerent and uncooperative. He complained of arthritis, heart trouble, stomach trouble, nervousness, electric shocks in the flesh of his arms, carried his own stethoscope and took his own I.Q.S., strychnine, grains 1/30, digitalis, etc. He tried watch making for a short time in Dayton; returned to Rhinelander and was admitted to the State Hospital at Winnebago in September, 1941, diagnosed: psychoneurosis, neurosthenia. In their examination of January 13, 1943 their report mentioned spinal puncture of August 2, 1939, giving Ross Jones faintly positive and coloidal gold 2333210000. They repeated this September 25, 1939 and results were entirely negative, including a flat curve. In August, 1939, his commitment papers stated he was "characterized by depression and delusion". Patient was incoherent and antagonistic towards his surroundings. He thought people were going

to shoot him; that his food was poisoned, and at times wished for kerosene so he could burn down the building. He complained of hearing singing voices in his ears. On admission, September 22, 1941 he was noticed to be irritable, seclusive, aloof, superior in attitude; would not work, and when observed, had marked difficulty in walking, though not when unobserved. He was antagonistic, disagreeable, suspicious, indifferent, careless of personal appearance, tied his trousers with a rag, and went without shoe laces in his shoes, and did not onject to staying on an untidy ward. He was sometimes abusive and profane toward personnel. On October 7, 1941 he spoke vaguely [fol. 107] of speculating in gold. He claimed that while at Dayton he invented a radio without any wires and with no built in aerial. Says he destroyed the parts of this radio and no one else would appreciate it or be intellectually able to understand it. He was getting short of money so he tore up the plans as someone might have stolen them. Claimed also that at the Wisconsin Veterans Home there were three doctors; two legal and one illegal, and they mixed something in his medicine. He thinks it was arsenic. He told the orderly "don't bring that stuff, I don't want it", but there was an argument and they threw him on his face; scratched it up and called the sheriff who took him to the State Hospital at Winnebago. "They treated me like a dog. One of the attendants grabbed me by the neck and tried to choke me. The food is no good, they throw garbage at you". Diagnosed: D.P.P., incompetent, and transferred to this facility February 23, 1943.

• • • •

[fols. 108-111] • • •

[fol. 112] The patient is considered by the examiner as a paranoid praecox with a psychoneurotic and a mental deficiency background.

• • • •

[fol. 113] REMARKS:

Claimant is not bedridden. He is able to travel, one attendant being necessary in traveling. He is considered insane and incompetent at this time. (Incompetent meaning that he presents findings in conformity with R&P 6902).

Claimant has a complete social and economic inadaptability at this time.

The diagnoses and recommendations in this case were concurred in by a majority to the members of the staff on April 9, 1943 and are hereby certified to be the members of the board, whose signatures are hereunto affixed.

• • • • •

[fol. 114] • • •

[fol. 115] EXHIBIT 6F

Exhibit 6 F

VETERANS ADMINISTRATION
Medical Form 10141
Rev. Oct. 1945

CLINICAL RECORD

WARD SURGEON'S PROGRESS AND TREATMENT RECORD

Ward surgeons will record on this sheet the diet, treatment, complications, changes of diagnosis, intercurrent diseases, and daily progress of the case. Adm. 2/23/43 Diag. Dementia Praecox, paranoid type

DATE	DIET	TREATMENT	DAILY NOTES	WARD
7-5-43			This patient has been residing on Ward 51 since April 22, 1943. At first he was rather anxious to be discharged and has frequently asked the examiner to release him as he had some unfinished business with the Veterans Administration. He showed the usual interest in his surroundings, seemed to be fairly communicative with other patients. The last few weeks, however, patient's general interest in his surroundings has slumped down and he has been frequently seen to sit with his head down as if he is talking to himself. He has not asked the examiner to go home for a few weeks. He goes out daily to the occupational therapy shop where he works in the Arts and Crafts. Patient has been quiet, cooperative, and neat in his appearance. He is apparently at present undergoing a period of depression. B. ERPS, M.D.	
7-14-43			A few days ago this patient began complaining that he feels poorly, appears to be staggering, and assumed marked invalidal reactions. He complained of vague aches and pains and he was therefor sent to 1-C. After resting in bed one day, patient stated he got up because he was afraid if he stayed longer in bed he would become weaker. An EKG shows patient to have some myocardial damage. Patient was returned today from 1-C and he states he feels better only generally weak. He does not appear as depressed as he was formerly. He expressed willingness to return to the Arts and Crafts. It appears that he accomplishes very little in the Arts and Crafts. His thoughts are continually occupied with the idea of leaving here and go to Dayton, Ohio, Home where he can prosecute his claims for pension or compensation. He has no hallucinations or delusions otherwise. B. ERPS, M.D.	
9/29/43			Patient has been tried on several O.T. assignments and is unable to adjust on detail ward because of his somatic delusions and refuses to cooperate in any attempt to stimulate him to take interest in his progress. Ideas all fixed on getting compensation for his "total disability". Transferred to Building 9 for reclassification. GEO. L. MOSBY, M. D.	
10/29			Decided for this place. Has somatic complaints upon which he is fixated. The weather change will improve depressed mood. I advise to keep hospitalized. Would like to see	

WARPOUSKE Adam B. NSC 1 628 265 5103
(Surname) (Given names) (C. No.)

WARD SURGEON'S PROGRESS AND TREATMENT RECORD (over)

115

DATE	DIET	TREATMENT	DAILY NOTES	WARD

he would like to go to Dayton but has no definite ideas of procuring employment at present. Appears - fair contact. Smiles at times. Cooperative.

Kuhlman

ward

Building Parole granted

so

6-5-45 Transferred from 125 to 66 Kuhlman

Discharge

This patient was presented before the staff on 7-5-45 for consideration of discharge from the hospital. After reviewing his case history and interrogating patient it was determined that patient had sufficiently improved from his psychosis to be allowed to leave the hospital although marked hyprochromedical residuals are still present, it was felt that these are in themselves not sufficient to prevent patient's adjustment on the outside. Patient felt that with the pension of $50.00 a month and light jobs that he can do on the outside he can get along. No delusions or hallucinations could be elicited at this time. Patient assumed a marked normal reaction when he appeared before the board otherwise there was anything of moment. Patient also has a chronic mydo cardial condition which was shown by EKG. He was considered competent for VA purposes. On 7-10-45 he was discharged from the hospital maximum hospital benefit. Patient proceed to Dayton, Ohio where he has friends and acquaintances with them he will reside.

[redacted] B. Ed., M.D./p

Warpaneke, Adam B. 75 [illegible] 5703

[fol. 116] EXHIBIT 6G

VETERANS ADMINISTRATION

FILED
8-30-
J.W.C.

RATING SHEET

Date August 25, 1945

Claimant's name: HARPOONIKE, Adam B. C- ft 1628 265

Occupational determination

Dates enlisted 5-2-18 Dates discharged 2-8-19

Character of discharges Honorable Dates of last examination 7-10-45 Hosp. Rpt.

In stating the ratings below, the effective Administration's Regulations and Instructions applicable shall be followed

(B) PERMANENT TOTAL FROM 10-10-42
Regulation 1(a), Part III, Paragraph 1(a)
DEMENTIA PRAECOX, PARANOID TYPE, COMP.
DISEASE OF THE HEART, CLASS II
OSTEOARTHRITIS, HYPERTROPHIC, LUMBAR, MILD
VARICOSE VEINS, BILAT., MILD
PLEURISY, FIBRINOUS, CHRONIC
DEFECTIVE VISION, DEAFNESS, PARTIAL, BILAT.
MODERATE, DEVIATION, NASAL SEPTUM, LEFT, MOD.

NOTE:

Hospital report showing condition at time of discharge shows veteran is competent. Veteran is unemployed and unemployable.

Re-examination scheduled for 1 year.

RECEIVED AUG 30 1945

Ex. L 6 (g)

M.C.

[fol. 117] EXHIBIT 6H

VETERANS ADMINISTRATION
Administration Forms Staff
Form approved by
Comptroller General U. S.
November 15, 1945

E 1 1 6-H

File No. 1628265
ORIGINAL

DECISION OF QUESTIONS OF FACT AND LAW

SUPPLEMENTAL AWARD BRIEF FACE

(Disability—Death—Compensation—Pension)

ADAM BENJAMIN WARPOUSKE (Name of veteran) PVT. ORD. DET. 69TH INF. (Rank and organization)

C/O EDW. W. MYERS. 638 REIBOLD BLDG. DAYTON, OHIO. (Name and address of payee)

Class of {pension} now being paid PUB. 2-73RD CONG., AS AMENDED. REG. 1(A) PART III (Title of act and section or regulation)

Date on which basic decision of fact and law was approved .....

If award is increased, give date evidence of entitlement was received .....

Is there any claim of the United States subject to recovery or offset? ..... If so, state amount, $ ..... and how to be recovered .....

Reason for amendment (state fully and completely all pertinent facts, such as disability rating showing degree of disability, effective date thereof, service connection, etc., date of birth, period of hospitalization, etc.):

RTG. 8-25-45. VETERAN RATED COMPETENT FOR V.A. PURPOSES, PAYMENTS TO MANAGER V.A. DOWNEY, ILLINOIS DISCONTINUED 7-31-45. TO PAY VETERAN DIRECT. VETERAN WILL BE IN CONTINUOUS (over) RECEIPT OF PERMANENT AND TOTAL PENSION FOR 10 YEARS ON 10-10-52.

Pursuant to the above the claimant is entitled to the following award of ~~compensation~~ pension under the provisions of the act of

3-20-33 PUB. 2-73RD CONG., AS AMENDED

5-27-44 PUB. 313-78TH CONG.

New award	Monthly payment	Commencing date	Ending date	New award	Monthly payment	Commencing date	Ending date
P.T.	50.00	7-10-45	10-9-52				
P.T.	60.00	10-10-52					

Less 6 (L)

LESS PRIOR PAYMENTS

Submitted 9-12-45, 19 by John W. Culbertson Title ADJ.

I, the undersigned, an officer of the Veterans Administration, duly and lawfully authorized to make decisions of questions of fact and law affecting claimants to benefits under all laws governing the payment of compensation or pension or accrued amounts of pension, compensation, or emergency officers' retirement pay, do hereby constitute in pursuance of such authority, the foregoing statements as my decision of fact and law. (Public No. 836, 71st Congress and Sec. 8, title 1, Public No. 2, 73d Congress.)

Approved 9-12, 1945 By John [illegible] Title AUTH. OFF.

117

Remarks (Continued)

Vet Discharged V.A. Downey, Illinois 7-10-45-
Rel: Self only AR 615-256(b)

[fols. 118-126] * * *

[fol. 127] EXHIBIT 7B

EXHIBIT 7-B

AWARD OR DISALLOWANCE SHEET

R. O. IDENT. NO. 30

☐ ORIGINAL AWARD ☒ AMENDED AWARD ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE

INSTRUCTIONS —If record is not used to fill in information in section, then fill in only those items which are underlined

1. NAME: Warbrooke, Adam Benjamin 16828265
General Delivery
Fort Bartel, Tex.

2. DEGREE OF DISABILITY: P & T.

CHECK APPLICABLE SERVICE(S): ☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE

DATE OF RATING: 1-20-49

PAYEE IS ENTITLED TO: ☐ COMPENSATION ☒ PENSION ☐ RETIRED

UNDER PROVISIONS OF ACT OF: 3-20-33 as amended.

AWARD DATA

3. NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED
none				

4. PAYEE (If other than above, show name and address)	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Same	60.00	10-18-48	A. P. D.

5. REMARKS: Payments previously discontinued by Amended Award approved 4-14-47, dep't D. L. P., because of veteran's failure to submit Form 619. Form finally received 10-8-48, more than 1 yr after requested. Payments reinstated as of 10-18-48 per Ar PA 1893. Birth record requested.

DISALLOWANCE DATA

6. BASIS FOR DISALLOWANCE (Circle number of reason for disallowance)

1. Not a veteran of wartime service.
2. In receipt of active duties or retirement pay.
3. Discharged under dishonorable conditions.
4. Less than ☐ 90 ☐ 60 days wartime service.
5. Disability incurred not in line of duty.
6. Claimant's failure to prosecute.
7. Death of sole willful misconduct.
8. Disability not incurred in wartime service.
10. Disability not incurred in peacetime service.
11. Less than 10 percent or 0 percent disability.
12. Disability not permanent and total.
13. Income sufficient to bar entitlement.
14. Disability not shown at time of last examination.
15. Disability not shown by evidence of record.
16. Constitutional or developmental abnormality.
17. Other.

SUBMITTED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
P. H. Nelson	1-28-49	[signature]	1-28-49
CONCURRED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONCURRED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONCURRED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE

[redacted]

[fol. 128] EXHIBIT 7C

Exhibit 7-C

AWARD OR DISALLOWANCE SHEET

R. O. IDENT. NO. 30

☐ ORIGINAL AWARD ☒ AMENDED AWARD ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE

INSTRUCTIONS: If stencil is not used to fill in information in caption, then fill in only those items which are unshaded

1 NAME: Warpenske, Adam Benjamin — C NO. 1628265 — ADDRESS — SERVICE SERIAL NO.

CITY — STATE — DATE OF CLAIM — TYPE — WAR

TYPE DISCHARGE — BRANCH OF SERVICE — ACTIVE DUTY DATE — DATE E. T. D.

DATE OF BIRTH — PLACE OF BIRTH — RANK — PAY GRADE

2 DEGREE OF DISABILITY: P & T.

CHECK APPLICABLE SERVICE(S): ☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE

DATE OF RATING: 1-20-49

PAYEE IS ENTITLED TO: ☐ COMPENSATION ☒ PENSION ☐ RETIRED

UNDER PROVISIONS OF ACT OF: 3-20-33 as amended.

AWARD DATA

3 NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED

4 PAYEE (If other than above, show name and address)	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Same	60.00	10-18-48	10-9-52
	72.00	10-10-52	
			L.P.P.

5 REMARKS: Veteran will be in receipt of pension for 10-9 days, on 10-10-52. Date of birth not known, vet

DISALLOWANCE DATA

6 BASIS FOR DISALLOWANCE (Circle number of reason for disallowance)

1 Not a veteran or wartime service.
2 In receipt of active service or retirement pay
3 Discharged under dishonorable conditions.
4 Less than ☐ 70 ☐ 90 days wartime service
5 Disability occurred not in line of duty
7 Claimant's failure to prosecute.
8 Result of own willful misconduct.
9 Disability not incurred in wartime service
10 Disability not incurred in peacetime service
11 Less than 10 percent or 0 percent disability
12 Disability not permanent and total
13 Income sufficient for own settlement
14 Disability not shown at time of last examination.
15 Inability not shown by evidence of record.
16 Constitutional or developmental abnormality
17 Other.

SUBMITTED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
J. H. Nelson	2-25-49	John Gamma	2-25-49
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE

Exh 7-C

[fol. 129] EXHIBIT 7D

Exhibit 7-D

AWARD OR DISALLOWANCE SHEET

R O (CLIENT NO) 53

☐ ORIGINAL AWARD ☒ AMENDED AWARD (Resumed) ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE

INSTRUCTIONS If stencil is not used to fill in information in caption, then fill in only those items which are unshaded C-1628.266

1 NAME (CPR) WARDDUSKE, ADAM BENJAMIN
ADDRESS GEN DEL SERVICE SERIAL NO
CITY PORT ISABEL STATE TEXAS DATE OF CLAIM TYPE WAR I
TYPE DISCHARGE BRANCH & SERVICE ACTIVE DUTY DATE DATE B A D
DATE OF BIRTH PLACE OF BIRTH RANK RACE SEX

2 DEGREE OF DISABILITY: P+T
CHECK APPLICABLE SERVICE(S): ☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE
DATE OF RATING: 1-20-49
PAYEE IS ENTITLED TO ☐ COMPENSATION ☒ PENSION ☐ RETIRED
UNDER PROVISIONS OF ACT OF: P.L. 2, 79 c, a a

AWARD DATA

3 NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED

4 PAYEE (If other than veteran, show name and address)	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Same	60.00	3-1-50	10-9-52
	72.00	10-10-52	
			Susp PP

5 REMARKS: Resumed award Final payment stopped D.L.P by 521 approved 3-1-50 statement of income for 1949 received 3-13-50 Rel-S

DISALLOWANCE DATA

6 BASIS FOR DISALLOWANCE (Circle number of reasons for disallowance)
2 Not a veteran of wartime service
3 In receipt of active service or retirement pay
4 Discharged under dishonorable conditions
5 Less than ☐ 70 ☐ 90 days wartime service
6 Disability incurred not in line of duty
7 Claimant's failure to prosecute
8 Result of own willful misconduct
9 Disability not incurred in wartime service
10 Disability not incurred in peacetime service
11 Less than 10 percent or 0 percent disability
12 Disability not permanent and total
13 Income sufficient to bar entitlement
14 Disability not shown at time of last examination
15 Disability not shown by evidence of record
16 Constitutional or developmental abnormality
17 Other

SUBMITTED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE
(illegible)	3-13-50	(illegible)	3-14-50
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE

(illegible) 7(d)

129

[fol. 130] EXHIBIT 7E

E.1.1.1.7.E.

Resumed

AWARD OR DISALLOWANCE SHEET

1. R. O. INDENT. NO. 53

2. TYPE OF AWARD: ☒ ORIGINAL AWARD ☐ AMENDED AWARD ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE — C# 1-629-265

INSTRUCTIONS.— If ground is not used to fill in information in caption, then fill in only those lines which are underlined

LAST NAME — FIRST NAME — MIDDLE NAME	C-NO.	3. DEGREE OF DISABILITY	4. CHECK APPLICABLE SERVICE(S)	5. DATE OF RATING
Warpouske, Adam Benjamin	SERVICE — SERIAL NO.	PAI	☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE	1-20-49
ADDRESS: General Deliv.				
CITY: Hot Springs STATE: Ark.	DATE OF CLAIM	TYPE	WAR	
TYPE DISCHARGE [redacted]	ACTIVE DUTY DATE	DATE R. A. D.		

6. PAYEE IS ENTITLED TO ☐ COMPENSATION ☒ PENSION ☐ RETIREMENT PAY UNDER PROVISIONS OF ACT OF P.L. 730 Con

7. AWARD DATA

A. NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED
1.				
2.				
3.				
4.				
5.				
6.				

B. PAYEE (If other than veteran, show name and address)	TOTAL AWARD	MONTHLY PAYMENTS	COMMENCING DATE	ENDING DATE
1. Same		72.00	1-20-49	
2.				
3.				
4.				
5.				
6.				Exp 00

8. REMARKS: Award is limited to payments for disallowance of compensation for 1950 and revoking no bar to vets benefits

Rehab

8. DISALLOWANCE DATA

A. DATE FOR DISALLOWANCE (Check number of reasons for disallowance)
1. NOT A VETERAN OF WARTIME SERVICE
2. NO RECORD OF ACTIVE SERVICE OR RETIREMENT PAY
3. DISCHARGED UNDER DISHONORABLE CONDITIONS
4. [redacted]
5. NOT DISABLED IN WARTIME SERVICE
6. DISABILITY NOT INCURRED IN WARTIME SERVICE

RECORDED, ABSTRACT UNIT APR 13 1951

DISABILITY NOT INCURRED IN PEACETIME SERVICE
DISABILITY NOT PERMANENT OR PRESENT DISABILITY
OTHER (Specify) Exh 7(2)

10. SIGNATURE (AUTHORIZED SIGNATURE)	11. DATE	12. SIGNATURE (AUTHORIZED SIGNATURE)	13. DATE
L. A. Clubbs	4/12/51	W. A. Strauss	4-12-51

130

[fol. 131] EXHIBIT 8

Exhibit 8
No. 1628 265
3029 Ft. St. Paul - 3.2.62

CLINICAL RECORD — NARRATIVE SUMMARY

DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED
3-1-56	-19-56	

(Sign and date at end of narrative)

HISTORY: This 68-year old W/M was admitted to the VAH, Portland, Oregon, on 3/1/56, in transfer from the Multnomah Hospital. He was admitted to the Multnomah Hospital on 1/5/56, with a left hemiplegia and inability to speak or swallow. Examination at that time revealed a fracture of the left hip which was pinned on 1/11/56. Chest x-rays revealed infiltrate which was treated with chloromycetin. During that hospitalization a tracheostomy was performed and the patient has been maintained on tube feedings since.

PHYSICAL EXAMINATION: This emaciated, elderly, white male appeared very weak and chronically ill on admission. His temperature was 99.2 rectally with a pulse of 96 and a blood pressure of 120/50. Cataracts were present in both eyes and the fundi could not be visualized. There was flattening of the left side of the face and deviation of the tongue to the left on extension. Rhonchi were present in both lung fields but fine crepitant rales were present at both bases. The heart was normal in size to percussion with a normal sinus rhythm. No murmurs present. A tracheotomy opening was present without a tube in place and the opening had begun to close. A flaccid paralysis of the left arm and a marked paresis of the left leg was present with wasting of the musculature of all extremities. Decubiti and excoriations are present over the hips, buttocks and feet. The patient appeared disoriented and unable to speak but occasionally responded to simple commands. He was lethargic but could be slightly aroused without difficulty. There was a left deep tendon reflex preponderance with a positive Hoffman on the left. The plantar responses were flexor bilaterally. The left umbilical superficial reflexes were present. Hypalgesia to pin prick was believed to be present over the left side but could be not definitely proven. A left palmomental reflex was present.

LABORATORY EXAMINATIONS: Serology was negative. Urinalysis revealed a 2+ albumin with numerous bacteria and WBC's. WBC and differential were within normal limits. Red hemogram revealed a hemoglobin of 11.2 grams with a hematocrit of 30.5. The routine blood chemistries were within normal limits. A lumbar puncture revealed initial pressure of 60 mm. of water. The cerebral spinal fluid revealed a slight increase in globulin with a total protein of 60 mgm.%. The remainder of the spinal fluid examination was within normal limits.

X-RAY EXAMINATIONS: X-rays have not been taken at this hospital to date (3/6/56).

HOSPITAL COURSE: On admission the patient was continued on tube feedings and attempts were made to get the patient up in a wheel chair for a short time each day. He has remained afebrile but there has been no clearing of his sensorium. The patient is frequently very restless and on repeated occasions has pulled out gastric tube used to feed him.

(Use additional sheets of this form (Standard Form 503) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	ORGANIZATION
W. S. BECK, M. D./eh		1 628 265 VAH, Portland, Oregon

PATIENT'S LAST NAME-FIRST NAME-MIDDLE NAME	HOSPITAL NO.	WARD NO.
WILLOUGHBY, Adam Benjamin	F 307 570	GF

NARRATIVE SUMMARY (Standard Form 502)

121

[fol. 132]

BLOCK RO FORTLAND ORE

CLINICAL RECORD	NARRATIVE SUMMARY	
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED
2-1-56	3-19-56	

(Sign and date at end of narrative)

Attempts were continued to improve the patient's nutrition by tube feeding and parenteral fluids. Also attempts were made to encourage the patient to take food orally which met with varying success. Chest x-ray on 3-6-56, again showed the abnormal densities in the right apical region which had been demonstrated at the Multnomah County Hospital. The patient's course remained stationary with continued [illegible] until 3-17-56, when the patient became more lethargic and pale. The patient was observed at that time to be rather cyanotic. On 3/18/56, the patient became febrile, the temperature reaching 102.4° rectally. The lethargy deepened [illegible] by 3/19/56, and a chest x-ray at that time revealed infiltrates in the [illegible] lower lobe. Patient remained febrile and the breathing became labored re- [illegible] frequent tracheal aspirations. The patient was started on chloromycetin but the respirations became more shallow and the patient quietly expired. The patient was pronounced dead at 4:45PM on 3/19/56.

[illegible]: (1) Bronco pneumonia, treated, expired. 3-1-56.

(2) Cerebral thrombosis of the right middle cerebral artery, due to arteriosclerosis, [illegible];

(3) Encephalomalacia of the fronto-parietal area on the right, due to thrombosis, treated, expired.

(4) [illegible] bilaterally, intra- [illegible]. X-ray 3-7-

Report APPROVED E C Goodell M D CHAIRMAN, DISCHARGE BOARD

(Use additional sheets of this form (Standard Form 503) if more space is required)

PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
Jas. Rex, M.D./ah	3/19/56	C 1 628 265	VAH, Portland, Oregon

PATIENT'S IDENTIFICATION (Use typed or written entries when Master Card, Desk Register Card, Admission Record, Clinical Record or medical roentgenogram is available)

HARPOONER, Adam Benjamin

Page 2.

REGISTER NO.	WARD NO.
P 107 570	07

NARRATIVE SUMMARY (Standard Form 502)

137

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